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Tax Doc. (1908.) No. 1

*Chapter 12 of the Revised Laws, and
Subsequent Enactments,*

REGULATING

TAXATION BY THE LOCAL ASSESSORS

IN

MASSACHUSETTS,

INCLUDING STATUTES RELATING TO THE COLLECTION OF TAXES.

PREPARED EXCLUSIVELY FOR USE OF ASSESSORS AND
COLLECTORS OF CITIES AND TOWNS.

[Revised Laws, chapter 14, § 4.]



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Commonwealth of Massachusetts.

TAX COMMISSIONER'S DEPARTMENT,
BOSTON, May 1, 1908.

To the Assessors of the Cities and Towns in Massachusetts.

GENTLEMEN:—The following compilation of the laws of this Commonwealth, of general application to the subject of the assessment and collection of taxes, has been prepared, and is printed and forwarded to the assessors of the various towns and cities of the Commonwealth, in compliance with the provisions of chapter 14, § 4, of the Revised Laws. The compilation also embraces a few provisions relating to the duties of assessors, not strictly of the same class, but closely connected, which are included to assist assessors in the performance of their duties. Subsequent legislation, amending, repealing, or extending these statutes will be printed from year to year and supplied to assessors for their information.

Yours respectfully,

WILLIAM D. T. TREFRY,
Tax Commissioner.

LAWS REGULATING TAXATION.

REVISED LAWS, CHAPTER 12.

OF THE ASSESSMENT OF TAXES.

SECTIONS	1-4. — Persons and Property Liable to Taxation.
SECTIONS	5-12. — Persons and Property Exempt from Taxation.
SECTIONS	13-28. — Where and to Whom Polls and Property shall be Assessed.
SECTIONS	29-33. — Evasion of Taxation.
SECTIONS	34-40. — Duty and Manner of Assessing Taxes.
SECTIONS	41-50. — Notices and Lists.
SECTIONS	51-66. — Assessment of Taxes.
SECTIONS	67-70. — Collector's List and Warrant.
SECTIONS	71-72. — Discount and Interest on Taxes.
SECTIONS	73-84. — Abatements.
SECTION	85. — Omitted Assessments.
SECTIONS	86, 87. — Re-assessment of Taxes.
SECTIONS	88-90. — Apportionment of Taxes on Real Estate subsequently Divided.
SECTION	91. — Illegal Assessments.
SECTIONS	92-97. — Additional Duties of Assessors.
SECTIONS	98, 99. — Responsibility and Compensation of Assessors.
SECTIONS	100, 101. — Apportionment of State Tax.

PERSONS AND PROPERTY LIABLE TO TAXATION.

SECTION 1. A poll tax of two dollars shall be assessed on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien. Persons subject to a poll tax.

1844, 145.	G. S. 11, § 1.	1901, 424, § 1.	4 Met. 181.	1780, 43.	1830, 151, § 2.	R. S. 7, § 1.	1843, 87.
	P. S. 11, § 1.	7 Mass. 523.	5 Met. 594.				

SECTION 2. All property real and personal situated within the commonwealth, and all personal property of the inhabitants of the commonwealth wherever situated, unless expressly exempted by law, shall be subject to taxation. Property subject to taxation.

16 Gray, 293.	4 Met. 564.	4 Cush. 12.	4 Gray, 500.	1780, 43.	1830, 151, § 2.	R. S. 7, § 2.	G. S. 11, § 2.
	6 Allen, 559.	101 Mass. 317.	106 Mass. 540.				P. S. 11, § 2.

SECTION 3. Real estate for the purpose of taxation shall include not only all land within the commonwealth but also all buildings and other things erected on or affixed to the same. Real estate.

125 Mass. 567.	101 Mass. 328.	102 Mass. 79.	118 Mass. 386.	R. S. 7, § 3.	G. S. 11, § 3.	P. S. 11, § 3.	22 Pick. 22.
	130 Mass. 428.	147 Mass. 33.	153 Mass. 141.				10 Cush. 614.

CHAPTER 329, ACTS OF 1907, AS AMENDED BY CHAPTER 193, ACTS OF 1908.

AN ACT TO PROVIDE FOR LOCAL TAXATION OF THE REAL ESTATE AND MACHINERY OF WATER COMPANIES.

Be it enacted, etc., as follows:

SECTION 1. The real estate and machinery of every private corporation organized under general or special laws of the commonwealth for the purpose of carrying on within the commonwealth the business of a water company, except such corporations as by charter have been made exempt from taxation, shall be subject to local taxation.

CHAPTER 385, ACTS OF 1904.

AN ACT TO PROVIDE FOR TAXING LEASEHOLD ESTATES ON THE COMMONWEALTH FLATS.

Be it enacted, etc., as follows:

SECTION 1. The lands of the commonwealth, situate in that part of the city of Boston called South Boston and known as the Commonwealth Flats, shall, if leased for business purposes, be taxed by the city of Boston to the lessees thereof, respectively, in the same manner as the lands and buildings thereon would be taxed to such lessees if they were the owners of the fee, except that the payment of the tax shall not be enforced by any lien upon or sale of the lands; but a sale of the leasehold interest therein and of the buildings thereon may be made by the collector of the city of Boston in the manner provided by law in case of non-payment of taxes for selling real estate, for the purpose of enforcing the payment of the taxes by such lessees to the city of Boston assessed under the provisions hereof.

Personal
estate.

1821, 107, § 2.

1830, 151, § 2.

R. S. 7, § 4.

1839, 139, § 2.

1849, 149.

G. S. 11, § 4.

1873, 354.

1881, 284, § 1;

304, § 6.

P. S. 11, § 4.

1882, 76.

1888, 363.

16 Pick. 435.

572.

9 Met. 73, 199.

10 Cush. 128.

10 Allen, 100.

11 Allen, 309.

SECTION 4. Personal estate for the purpose of taxation shall include:—

First, Goods, chattels, money and effects, wherever they are; ships and vessels at home or abroad, except as provided in section seven.

Second, Money at interest, and other debts due the person to be taxed more than he is indebted or pays interest for; but not including in such debts due him or indebtedness from him any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate.

Third, Public stocks and securities, bonds of railroads and street railways, stocks in turnpikes, bridges and moneyed corporations, within or without this commonwealth, except as provided in section sixty-one of chapter fourteen.

139 Mass. 559.

147 Mass. 430.

14 Allen, 359, 366.
103 Mass. 544.
105 Mass. 526.
106 Mass. 540.
136 Mass. 129.
137 Mass. 111.
138 Mass. 414.

Fourth, The income from an annuity, [or from ships and vessels engaged in the foreign carrying trade within the meaning of section seven,] and the excess above two thousand dollars of the income from a profession, trade or employment accruing to the person to be taxed during the year ending on the first day of May of the year in which the tax is assessed. Incomes derived from property subject to taxation shall not be taxed.

SECTION 4, CHAPTER 374, ACTS OF 1902.

So much of the fourth clause of section four of chapter twelve of the Revised Laws as relates to the tax on income of ships or vessels engaged in the foreign carrying trade, and all acts and parts of acts inconsistent herewith, are hereby repealed.

PERSONS AND PROPERTY EXEMPT FROM TAXATION.

SECTION 5. The following property and polls shall be exempted from taxation:—

Exemptions.
R. S. 7, § 5.
G. S. 11, § 5.

P. S. 11, § 5.
4 Met. 564.
8 Cush. 237.

4 Gray, 500.
1 Allen, 199.
12 Allen, 75.

116 Mass. 193.
170 Mass. 160.
7 Wallace, 16.

First, The property of the United States.

R. S. 7, § 5, cl. 1.

G. S. 11, § 5, cl. 1.

P. S. 11, § 5, cl. 1.

Property of the United States.

Second, The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken.

— of the commonwealth.
R. S. 7, § 5, cl. 1.
1853, 122.

G. S. 11, § 5, cl. 2.

1867, 101.

P. S. 11, § 5, cl. 2.

153 Mass. 141.

Third, The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the

— of charitable, etc., institutions.
1830, 151, § 6.
R. S. 7, § 5, cl. 2.
G. S. 11, § 5, cl. 3.
1874, 375, § 8.
1878, 214.
P. S. 11, § 5, cl. 3.
1882, 217, § 2.
1886, 231.
1888, 158.
1889, 465.
2 Cush. 611.

12 Cush. 54.
99 Mass. 599.
101 Mass. 319.
104 Mass. 470,
481.
113 Mass. 518.
114 Mass. 337.
116 Mass. 181,
188.
118 Mass. 164,
362.
120 Mass. 212.

Property of
agricultural
etc., societies,
1851, 215.
G. S. 11, § 5,
cl. 9.

— of grand
army and vet-
eran associa-
tions.
1882, 217, § 2.
1889, 465.

Bunker Hill
Monument.

Churches.
1821, 107, § 2.
R. S. 7, § 5,
cl. 5.
1841, 127.
G. S. 11, § 5,
cl. 7.
1865, 206, § 1.

Cemeteries.
1841, 114, § 7.
G. S. 11, § 5,
cl. 8.

Property of
certain fe-
males, aged
persons and
minors.
1858, 43, § 1.
G. S. 11, § 5, cl.
10.
1878, 206, § 1.
1880, 143.

stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one.

129 Mass. 178.	147 Mass. 396, 427.	160 Mass. 409.	174 Mass. 144.
136 Mass. 285.	153 Mass. 85.	167 Mass. 505.	175 Mass. 118,
142 Mass. 24.	154 Mass. 15.	172 Mass. 60.	145, 293.
145 Mass. 111, 139.	155 Mass. 329.	173 Mass. 232.	

Fourth, The real and personal estate of incorporated agricultural societies and the portions of real estate and buildings of incorporated horticultural societies used for their offices, libraries and exhibitions.

P. S. 11, § 5, cl. 9. 1884, 176. 116 Mass. 189, 191.

Fifth, The real and personal estate of any grand army or veteran association, incorporated within this commonwealth for the purpose of owning property for use and occupation by posts of the grand army of the republic, to the extent of twenty thousand dollars, if it is actually used and occupied by such association and the net income from said property is used for charitable purposes in aid of needy soldiers of the war of the rebellion and their dependents; but it shall not be exempt for any year in which such association wilfully omits to bring in to the assessors the list and statement required by section forty-one.

Sixth, The Bunker Hill Monument.

R. S. 7, § 5, cl. 3. G. S. 11, § 5, cl. 5. P. S. 11, § 5, cl. 5.

Seventh, Houses of religious worship owned by, or held in trust for the use of, any religious organization and the pews and furniture; but the exemption shall not extend to portions of such houses appropriated for purposes other than religious worship or instruction.

P. S. 11, § 5, cl. 7. 1 Met. 538. 118 Mass. 164. 127 Mass. 378.
129 Mass. 178. 147 Mass. 397. 155 Mass. 329.

Eighth, Cemeteries, tombs and rights of burial, so long as they shall be dedicated to the burial of the dead.

P. S. 11, § 5, cl. 8. 118 Mass. 354, 361. 150 Mass. 12. 152 Mass. 408.

Ninth, The property, to the amount of five hundred dollars, of a widow, of an unmarried woman above the age of twenty-one years, of a person above the age of seventy-five years or of any minor whose father is deceased, whether such property be owned by such persons separately, or jointly, or as tenants in common: *provided*, that the whole

estate real and personal of such person does not exceed in value the sum of one thousand dollars, exclusive of property otherwise exempted under the provisions of this section. No property shall be so exempt which the assessors shall adjudge has been conveyed to such person to evade taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by the provisions of section seventy-seven. [For amendment to this section see clause 13, chapter 367, Acts of 1907.]

Tenth, The polls and any portion of the estates of persons who by reason of age, infirmity and poverty are in the judgment of the assessors unable to contribute fully toward the public charges.

G. S. 11, § 5, cl. 13. P. S. 11, § 5, cl. 12. 137 Mass. 272. 165 Mass. 375.

Eleventh, The wearing apparel and farming utensils of every person; his household furniture not exceeding one thousand dollars in value; and the necessary tools of a mechanic not exceeding three hundred dollars in value.

G. S. 11, § 5, cl. 7. 1865, 206, § 1. P. S. 11, § 5, cl. 6. 167 Mass. 371.

Twelfth, Mules, horses and neat cattle less than one year old, swine and sheep less than six months old and domestic fowls not exceeding fifteen dollars in value.

G. S. 11, § 5, cl. 11. P. S. 11, § 5, cl. 11. 1894, 220.

Thirteenth, The property of the following classes of persons to the amount of two thousand dollars in the case of each person, provided the whole estate, real and personal, of the person so exempted does not exceed in value the sum of five thousand dollars, and provided further that only two thousand dollars shall be exempted to any one family, and that the combined property of the family does not exceed five thousand dollars: First. Soldiers and sailors who served in the military or naval service of the United States in the war of the rebellion and who were honorably discharged therefrom, and who, by reason of injury received or disease contracted while in such service and in the line of duty, lost the sight of both eyes, or lost the sight of one eye, the sight of the other having been previously lost, or who lost one or both feet, or one or both hands. Second. Soldiers and sailors who served as aforesaid and were honorably discharged as aforesaid, and who, as the result of disabilities contracted while in such service and in the line of duty, have become permanently

P. S. 11, § 5, cl. 10.
1885, 169.
137 Mass. 272.

Property
of indigent,
etc., persons.
1821, 107, § 6.
R. S. 7, § 8,
cl. 8.

Household
furniture, etc.
1821, 107, § 2.
1829, 27, § 2.
R. S. 7, § 5,
cl. 4.

Young cattle,
etc.
1821, 107, § 2.
R. S. 7, § 5,
cl. 6.

Property of
soldiers and
sailors.
1894, 315.
1895, 202.
1897, 148.
1898, 370.

incapacitated for the performance of manual labor to an extent equivalent, in the judgment of the assessors, to the loss of a hand or foot. Third. Wives or widows of soldiers or sailors who would be entitled to exemption under either of the two preceding paragraphs.

The certificate of the granting of a pension to any such soldier or sailor by the United States for such injury or disability shall, while such pension continues, be sufficient evidence of the receiving of such injury or disability; but the assessors may receive other evidence thereof. A person aggrieved by the judgment of the assessors may appeal to the county commissioners, within the time and in the manner allowed by the provisions of section seventy-seven.

CHAPTER 315, ACTS OF 1906.

AN ACT RELATIVE TO THE EXEMPTION FROM TAXATION OF
VETERANS OF THE CIVIL WAR AND THEIR WIDOWS.

Be it enacted, etc., as follows:

SECTION 1. Soldiers and sailors who served in the military or naval service of the United States in the war of the rebellion, and who were honorably discharged therefrom, shall, at their request, be exempt from the assessment of a poll tax, and the property of soldiers and sailors who served as aforesaid and were honorably discharged as aforesaid, but who would not be entitled to exemption under the thirteenth clause of section five of chapter twelve of the Revised Laws, and the property of the wives or widows of such soldiers or sailors, shall be exempted from taxation to the amount of one thousand dollars in the case of each person: *provided*, that the whole estate, real and personal, of the person so exempted does not exceed in value the sum of five thousand dollars; and *provided, further*, that only one thousand dollars shall be exempted to any one family, and that the combined property of the family does not exceed five thousand dollars.

SECTION 2. The widows of soldiers and sailors who served as aforesaid and who lost their lives in the war of the rebellion shall be entitled to such exemption from taxation as is specified in the thirteenth clause of section five of chapter twelve of the Revised Laws.

CHAPTER 481, ACTS OF 1906.

AN ACT TO PROVIDE THAT CERTAIN VETERAN SOLDIERS AND SAILORS MAY VOTE WITHOUT BEING ASSESSED FOR A POLL TAX.

Be it enacted, etc., as follows:

SECTION 1. Soldiers and sailors who are exempt from the assessment of a poll tax under the provisions of chapter three hundred and fifteen of the acts of the year nineteen hundred and six shall have the same right to register and to vote as if they were assessed for a poll tax, and the assessors for this purpose shall return the names of such soldiers and sailors in the same manner as they do the names of persons so assessed.

CHAPTER 367, ACTS OF 1907.

AN ACT RELATIVE TO THE EXEMPTION FROM TAXATION OF VETERANS OF THE CIVIL WAR.

Be it enacted, etc., as follows:

SECTION 1. Chapter three hundred and fifteen of the acts of the year nineteen hundred and six is hereby amended by striking out section one and inserting in place thereof the following:—Section 1. Soldiers and sailors who served in the military or naval service of the United States in the war of the rebellion, and who were honorably discharged therefrom, shall be assessed for, but shall be exempt, at their request, from the payment of a poll tax, and the property of soldiers and sailors who served as aforesaid and were honorably discharged as aforesaid but who would not be entitled to exemption under the thirteenth clause of section five of chapter twelve of the Revised Laws, and the property of the wives or widows of such soldiers or sailors, shall be exempted from taxation to the amount of one thousand dollars in the case of each person: provided, that the whole estate, real and personal, of the person so exempted does not exceed in value the sum of five thousand dollars, exclusive of the value of the mortgage interest, held by persons other than the person to be exempted in such mortgaged real estate as may be included in said whole estate; and provided, further, that the combined exemption of such a soldier or sailor and his wife shall not exceed one thousand dollars, and provided, further, that no exemption

shall be made of the property of such a soldier or sailor or his wife whose combined property estimated in the manner above provided exceeds five thousand dollars. If the property taxable in the commonwealth of a person entitled to exemption under the provisions of this act, or of the ninth and thirteenth clauses of section five of chapter twelve of the Revised Laws, is taxable in more than one city or town, such proportion of the total exemption shall be made in each city or town as the value of the property taxable in such city or town bears to the whole of the property taxable in the commonwealth. No exemption shall be made under the provisions of this act, or of the ninth and thirteenth clauses of section five of chapter twelve of the Revised Laws, of the property of a person who is not a legal resident of this commonwealth.

CHAPTER 493, ACTS OF 1906.

AN ACT RELATIVE TO THE EXEMPTION FROM TAXATION OF BONDS AND CERTIFICATES OF INDEBTEDNESS ISSUED BY THE COMMONWEALTH OF MASSACHUSETTS.

Be it enacted, etc., as follows:

SECTION 1. *Bonds or certificates of indebtedness of the commonwealth issued since the first day of January in the year nineteen hundred and six, or which may hereafter be issued, shall be exempt from taxation for state, county, city or town purposes. Such bonds or certificates of indebtedness shall state on their face that they are exempt from taxation in Massachusetts.*

CHAPTER 464, ACTS OF 1908.

AN ACT TO EXEMPT FROM TAXATION FUTURE ISSUES OF MUNICIPAL AND COUNTY BONDS, NOTES AND CERTIFICATES OF INDEBTEDNESS.

Be it enacted, etc., as follows:

SECTION 1. *Bonds, notes and certificates of indebtedness of any county, city or town in the commonwealth which may be issued on or after the first day of May in the year nineteen hundred and eight shall be exempt from taxation for state, county, city or town purposes. Such bonds, notes and certificates of indebtedness shall state upon their face that they are exempt from taxation in Massachusetts, and, unless they so state, shall not be exempt.*

SECTION 2. *So much of the deposits of savings banks and institutions for savings as is invested in the bonds, notes or certificates of indebtedness described in section one of this act shall be exempt from taxation.*

CHAPTER 594, ACTS OF 1908.

AN ACT RELATIVE TO EXEMPTING FROM TAXATION CERTAIN BONDS, NOTES AND CERTIFICATES OF INDEBTEDNESS OF FIRE AND WATER SUPPLY DISTRICTS.

Be it enacted, etc., as follows:

SECTION 1. *Section one of chapter four hundred and sixty-four of the acts of the year nineteen hundred and eight is hereby amended by inserting after the word "county", in the first line, the words:— fire district, water supply district,—by inserting after the word "county", in the fourth line, the words:— fire district, water supply district,—and by inserting after the word "shall", in the fifth line, the words:— when issued,— so as to read as follows:— Section 1. Bonds, notes and certificates of indebtedness of any county, fire district, water supply district, city or town in the commonwealth which may be issued on or after the first day of May in the year nineteen hundred and eight shall be exempt from taxation for state, county, fire district, water supply district, city or town purposes. Such bonds, notes and certificates of indebtedness shall when issued state upon their face that they are exempt from taxation in Massachusetts, and, unless they so state, shall not be exempt.*

SECTION 6. All plantations of chestnut, hickory, white ash, white oak, sugar maple, European larch and pine timber trees, in number not less than two thousand trees to the acre, upon land, not at the time of said planting woodland or sprout-land and not having been such within five years previously, the actual value of which at the time of planting does not exceed fifteen dollars per acre, shall, with such land, be exempt from taxation for a period of ten years after said trees have grown in height four feet on the average subsequently to such planting, upon satisfactory proof by the owners to the assessors of these facts; but such exemption shall not extend beyond the time during which said land is devoted exclusively to the growth of said trees.

Plantations of
timber trees.
1878, 131.
1880, 109.
P. S. 11, § 7.
111 Mass. 473.
118 Mass. 386.
137 Mass. 272.

CHAPTER 120, ACTS OF 1908.

AN ACT RELATIVE TO THE TAXATION OF PLANTATIONS OF CERTAIN VARIETIES OF TREES.

Be it enacted, etc., as follows:

Chapter twelve of the Revised Laws is hereby amended by striking out section six and inserting in place thereof the following:—Section 6. Land upon which pines, chestnuts, larches, spruces, hemlocks, walnuts, hickories, American and large-toothed poplars, yellow and paper birches, beeches, maples, basswoods, or ash timber trees, or others when approved by the state forester, have been set out or planted to the number of not less than six hundred per acre, and which by such setting out or planting has become evenly stocked with such trees to the number of not less than twelve hundred per acre, including in such number the trees growing naturally upon said land, shall be exempt from taxation for a period of ten years after the said trees have grown in height two feet on the average, upon satisfactory proof by the owners to the assessors of the foregoing facts: provided, that at the time when the trees are planted or set out the said land is not woodland or sproutland, or land containing more than six hundred standing trees to the acre, and does not exceed in value ten dollars per acre; and provided, further, that such exemption shall not extend beyond the time during which said land is devoted exclusively to the growth of said trees.

Ships and vessels engaged in the foreign carrying trade. 1881, 284, §§ 1, 2. P. S. 11, § 8.

[SECTION 7. Ships and vessels engaged in the foreign carrying trade, whether actually so engaged at the time of assessment or then in port undergoing repairs, shall not, for the purpose of taxation, be included in the personal estate of persons to be taxed; but the net yearly income of such ships and vessels shall be taxable to the owners thereof in their respective places of residence, in proportion to their several interests therein.

Same subject. 1881, 284, § 3. P. S. 11, § 9. 137 Mass. 272.

SECTION 8. The foregoing exemption shall not apply to any ship or vessel, unless its agent or owner annually, on or before the first day of June, returns in writing under his oath, to the assessors of each city and town in the commonwealth in which an owner of any share or interest in the ship or vessel resided on the first day of May in said year, the name of such owner, the name, class and tonnage of the

ship or vessel, the fact that it was on said first day of May engaged in the foreign carrying trade within the meaning of the preceding section, the share or interest of such owner therein, and the dividends paid to him upon his said share or interest during the year ending on said first day of May; and such dividends shall constitute the net yearly income to be taxed to such owner as provided in said section.

SECTION 9. The assessors of a city or town may, on or before the first day of September in any year before the year nineteen hundred and three, make a return under oath to the tax commissioner showing the amount of its taxable valuation on the preceding first day of May, the fair cash value of the ships and vessels returned to them in said year under the preceding section, the net income therefrom so returned, the rate of tax on each one thousand dollars in said year, and the increase in said rate arising under the provisions of the two preceding sections. The commissioner shall thereupon credit to the city or town as a set off to any tax or other payment to be made by it to the treasurer and receiver general an amount equal to the assessment of said increase in the rate of tax upon the amount of said taxable valuation.]

Sections 7, 8 and 9 were repealed by chapter 375, Acts of 1902.

SECTION 10. Property held by a city or town in another city or town for the purpose of a water supply, if yielding no rent, shall not be liable to taxation therein, but the city or town so holding it shall, annually in September pay to the city or town in which such property lies, an amount equal to that which such place would receive for taxes upon the average of the assessed values of such land, without buildings or other structures, for the three years last preceding the acquisition thereof, the valuation for each year being reduced by all abatements thereon; but any part of such land or buildings from which any revenue in the nature of rent is received shall be subject to taxation.

SECTION 11. If such land is part of a larger tract which has been assessed as a whole, its assessed valuation shall be taken to be that proportional part of the valuation of the whole tract which the value of the land so acquired, exclusive of buildings, bore in the year of assessment to the value of the entire estate.

Return to tax commissioner of valuation of vessels in foreign carrying trade, and set-off.
1881, 284.
§§ 5, 6.
P. S. 11, § 10.
1887, 373.
1889, 286.
1891, 116.
1893, 149.
1898, 353.

Land held by a city or town in another city or town for a water supply.
1893, 352, § 1.

Valuation of such land.
1893, 352, § 2.

Appeal from
such valuation.
1893, 352,
§§ 2, 3.

SECTION 12. The assessors of a city or town in which land is acquired by another city or town for the purpose of a water supply shall, within one year after such acquisition, determine the said average valuation of such land, and certify the amount so determined to such other city or town. The mayor of a city or the selectmen of a town, within six months after receipt of said certificate, may appeal from such determination to the superior court for the county where the land lies; and said court shall determine such valuation in the manner provided in the two preceding sections, and the provisions of sections seventy-eight and seventy-nine, so far as applicable, shall govern such appeal.

CHAPTER 161, ACTS OF 1903.

AN ACT RELATIVE TO LANDS TAKEN FOR THE PURPOSES OF
WATER SUPPLY.

Be it enacted, etc., as follows:

SECTION 1. *Section twelve of chapter twelve of the Revised Laws is hereby amended by adding at the end thereof the following:— If land within any city or town shall have been taken from such city or town for said purposes, and for any one of the three years prior to the taking shall have been used for any public purpose, and for that reason no taxes shall have been collected thereon, the city or town and the board or officer having charge of the water supply may within six years after the taking agree as to the value of the land upon which the annual payment is to be made as aforesaid from the time of the taking, and if they cannot agree the board or officer shall notify the city or town thereof; and thereupon the value shall be determined by the superior court under the provisions of said sections seventy-eight and seventy-nine, and said notice shall be deemed to be the notice referred to in said section seventy-eight. The provisions of this section and of the two preceding sections shall apply to property acquired for the purposes of the metropolitan water supply,— so as to read as follows:—*
Section 12. The assessors of a city or town in which land is acquired by another city or town for the purpose of a water supply shall, within one year after such acquisition, determine the said average valuation of such land, and certify the amount so determined to such other city or town. The mayor of a city or the selectmen of a town, within six

months after receipt of said certificate, may appeal from such determination to the superior court for the county where the land lies; and said court shall determine such valuation in the manner provided in the two preceding sections, and the provisions of sections seventy-eight and seventy-nine, so far as applicable, shall govern such appeal.

If land within any city or town shall have been taken from such city or town for said purposes, and for any one of the three years prior to the taking shall have been used for any public purpose, and for that reason no taxes shall have been collected thereon, the city or town and the board or officer having charge of the water supply may within six years after the taking agree as to the value of the land upon which the annual payment is to be made as aforesaid from the time of the taking, and if they cannot agree the board or officer shall notify the city or town thereof; and thereupon the value shall be determined by the superior court under the provisions of said sections seventy-eight and seventy-nine, and said notice shall be deemed to be the notice referred to in said section seventy-eight. The provisions of this section and of the two preceding sections shall apply to property acquired for the purposes of the metropolitan water supply.

WHERE AND TO WHOM POLLS AND PROPERTY SHALL BE
ASSESSED.

SECTION 13. The poll tax shall be assessed upon each person liable thereto in the city or town of which he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll tax of minors liable to taxation shall be assessed to, and in the place of the residence of, the parents, masters or guardians having control of the persons of such minors; but if a minor has no parent, master or guardian within the commonwealth, he shall be personally taxed for his poll, as if he were of full age. The poll tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll. In a city each inhabitant liable to assessment shall be assessed in the ward where he dwells; but no tax shall be invalid by reason of a mistake of the assessors in ascertaining the ward in which a person should be assessed.

126 Mass. 161, 166.

132 Mass. 93.

137 Mass. 272.

Poll tax,
where assessed.
1780, 43.
1821, 107, § 3.
1830, 151, § 3.
R. S. 7, § 6.
G. S. 11, § 6.
1876, 226.
§ 1, 7.
P. S. 11, § 11.
5 Pick. 369.
1 Met. 242,
250.
3 Met. 199.
4 Met. 181.
11 Cush. 362.
12 Cush. 44, 52,
54.
2 Gray, 484.
3 Gray, 493.
7 Gray, 299.
9 Gray, 357.
12 Gray, 21.
16 Gray, 337.
4 Allen, 462.
12 Allen, 111,
598.
124 Mass. 53,
132.

Person to be
taxed in place
where he
claims his
residence.
1850, 276.
G. S. 11, § 7.
P. S. 11, § 12.

SECTION 14. A person liable to a poll tax, who is in a city or town on the first day of May, and who, when inquired of by the assessors thereof, refuses to state his legal residence, shall for the purpose of taxation be deemed an inhabitant of such place. If he designates another place as his legal residence, said assessors shall notify the assessors of such other place, who shall thereupon tax him as an inhabitant thereof; but he shall not be exempt from the payment of a tax legally assessed upon him in his legal domicil.

Land, where
and to whom
taxed.
1780, 43.
1830, 151, § 3.
R. S. 7, § 7.
G. S. 11, § 8.
1881, 304, § 3.
P. S. 11, § 13.
1889, 84.
1 Cush. 142.
7 Gray, 127,
277.
4 Allen, 57.
110 Mass. 47.
112 Mass. 535.
115 Mass. 32.
117 Mass. 233.
129 Mass. 378.
132 Mass. 94.

SECTION 15. Taxes on real estate shall be assessed, in the city or town in which the estate lies, to the person who is either the owner or in possession thereof on the first day of May, and the person appearing of record as owner on the first day of May, even though deceased, shall be held to be the true owner thereof. Except as provided in the three following sections, mortgagors of real estate shall for the purpose of taxation be deemed the owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

138 Mass. 434. 139 Mass. 19.

143 Mass. 337. 148 Mass. 510. 149 Mass. 269. 152 Mass. 203. 175 Mass. 293.

CHAPTER 113, ACTS OF 1902.

AN ACT RELATIVE TO THE RECORD OF THE OWNERSHIP OF REAL ESTATE SUBJECT TO TAXATION.

Be it enacted, etc., as follows:

SECTION 1. *Section fifteen of chapter twelve of the Revised Laws is hereby amended by inserting after the word "record", in the fourth line, the words:— in the records of the county, or of the district, if such county is divided into districts, in which the estate lies,— so as to read as follows:— Section 15. Taxes on real estate shall be assessed, in the city or town in which the estate lies, to the person who is either the owner or in possession thereof on the first day of May, and the person appearing of record, in the records of the county, or of the district, if such county is divided into districts, in which the estate lies, as owner on the first day of May, even though deceased, shall be held to be the true owner thereof. Except as provided in the three following sections, mortgagors of real estate shall for the purpose of taxation be deemed the owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.*

SECTION 16. If any person has an interest in real estate, not exempt from taxation under section five, as holder of a duly recorded mortgage given to secure the payment of a fixed and certain sum of money, the amount of his interest as mortgagee shall be assessed as real estate in the place where the land lies; and the mortgagor shall be assessed only for the value of such real estate after deducting the assessed value of the interest therein of such mortgagee. If such estate is situated in two or more places, the amount of the mortgagee's interest to be assessed in each place shall be proportioned to the assessed value of the mortgaged real estate in the respective places, deducting therefrom the taxable amount of prior mortgages, if any, thereon.

Taxation of
mortgaged
land.
1881, 304, § 1.
P. S. 11, § 14.
1882, 175, § 3
135 Mass. 569.
137 Mass. 80.
159 Mass. 551.

SECTION 17. If the holder of such mortgage fails to file in the assessors' office a statement under oath of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be conclusive as to the extent of such interest; but his interest in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate which has been divided after the creation of such mortgage need not be apportioned upon the several parts of such estate, except as provided in sections eighty-eight to ninety inclusive.

Statements of
mortgage con-
clusive on
mortgagee,
when.
1881, 304, § 2.
P. S. 11, § 15.
159 Mass. 553.

CHAPTER 112, ACTS OF 1902.

AN ACT RELATIVE TO THE TAXATION OF MORTGAGED REAL ESTATE.

Be it enacted, etc., as follows:

SECTION 1. *Section seventeen of chapter twelve of the Revised Laws is hereby amended by adding at the end thereof the words: — Whenever, in any case of mortgaged real estate, a statement is not brought in as herein provided, no tax on such real estate for the year then current shall be invalidated for the reason that a mortgagee's interest therein has not been assessed to him, — so as to read as follows: — Section 17. If the holder of such mortgage fails to file in the assessors' office a statement under oath of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid*

upon such mortgage and of his interest therein, the amount stated in the mortgage shall be conclusive as to the extent of such interest; but his interest in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate which has been divided after the creation of such mortgage need not be apportioned upon the several parts of such estate, except as provided in sections eighty-eight to ninety inclusive. Whenever, in any case of mortgaged real estate, a statement is not brought in as herein provided, no tax on such real estate for the year then current shall be invalidated for the reason that a mortgagee's interest therein has not been assessed to him.

Mortgagors and mortgagees joint owners for taxation. 1881, 304, § 3. P. S. 11, § 16. 137 Mass. 80, 273. 159 Mass. 553.

SECTION 18. Mortgagors and mortgagees referred to in the two preceding sections shall for the purpose of taxation be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, an assessor or the collector of taxes, upon application, shall give to any such mortgagee or mortgagor a tax bill showing the whole tax on the mortgaged estate and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees.

Certain railroad bonds to be deemed mortgages on real estate. 1889, 348.

SECTION 19. Bonds issued by the New York and New England Railroad Company for the payment of which first mortgages made as provided in chapter three hundred and one of the acts of the year eighteen hundred and eighty-eight are held as collateral security, and also the mortgage notes so held as collateral security, shall, for the purpose of taxation and for the purpose of exemption of deposits in savings banks and institutions for savings from taxation, be deemed to be a loan on mortgage of real estate, taxable as real estate, and not otherwise.

Tenant may recover of landlord taxes paid. 1821, 107, § 3. 1830, 151, § 3. R. S. 7, § 8. G. S. 11, § 9.

SECTION 20. If a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is a different agreement between them.

P. S. 11, § 17.

115 Mass. 32.

142 Mass. 568.

Real estate of decedent, how

SECTION 21. The undivided real estate of a deceased

person may be assessed to his heirs or devisees, without designating any of them by name, until they have given notice to the assessors of the division of the estate and of the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective proportions thereof.

SECTION 22. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased or the validity thereof, may be assessed in general terms to his estate, and said tax shall constitute a lien upon the land so assessed and may be enforced by sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.

SECTION 23. All personal estate, within or without the commonwealth, shall be assessed to the owner in the city or town in which he is an inhabitant on the first day of May, except as provided in chapter fourteen and in the following clauses of this section:—

4 Met. 181.	7 Gray, 277.	9 Allen, 246.	112 Mass. 384.	131 Mass. 424.
10 Cush. 65.	9 Gray, 433.	14 Allen, 366.	124 Mass. 143.	132 Mass. 93.
11 Cush. 362.	13 Gray, 488.	103 Mass. 279.	125 Mass. 348.	135 Mass. 258.
3 Gray, 494.	16 Gray, 292.	104 Mass. 587.	126 Mass. 161.	137 Mass. 332.
6 Gray, 579.	337.	109 Mass. 270.	166.	158 Mass. 461.

First, Goods, wares, merchandise¹ and other stock in trade, except ships or vessels owned by a copartnership, and stock employed in the business of manufacturing or of the mechanic arts in cities or towns in the commonwealth, other than those in which the owners reside, whether such owners reside within or without the commonwealth, shall be taxed in the cities or towns in which the owners hire or occupy manufactories, stores, shops or wharves, whether such property is in said places or elsewhere on the first day of May of the year when the tax is assessed.

13 Gray, 491.	101 Mass. 329.	139 Mass. 17, 266.
145 Mass. 110.	150 Mass. 155.	151 Mass. 242.
		161 Mass. 9, 326.

Second, Machinery employed in any branch of manufactures including machines used or operated under a stipulation providing for the payment of a royalty, or compensation in the nature of a royalty, for the privilege of using or operating the same, and all personal property within the commonwealth leased for profit, shall be assessed where such machines or such personal property are located, to the

taxable.
Heirs, etc.,
severally liable.
Contribution.
R. S. 7, § 12.
G. S. 11, § 10.
P. S. 11, § 18.
149 Mass. 270.
152 Mass. 219.

Real estate of
decendent, how
taxable if title
doubtful, etc.
1847, 226.
G. S. 11, § 11.
P. S. 11, § 19.
149 Mass. 270.

Assessment of
personal
estate.
1830, 151, § 2.
R. S. 7, §§ 9,
10.
1839, 139, § 2.
G. S. 11, § 12.
P. S. 11, § 20.
1 Met. 242,
250.

Assessment of
personal
estate,
except stock
in trade, etc.,
employed in
other places.
1821, 107, § 5.
1830, 151, § 2.
R. S. 7, § 10,
cl. 1.
1839, 139, § 1.
1859, 114.
G. S. 11, § 12,
cl. 1.
P. S. 11, § 20,
cl. 1.
4 Met. 186.
4 Cush. 543.
10 Cush. 65.
6 Gray, 579.

Machinery
employed in
manufactur-
ing.
1830, 151, § 2.
R. S. 7, § 10,
cl. 2.
1837, 86.
G. S. 11, § 12,
cl. 2.
P. S. 11, § 20,
cl. 2.

¹See *New England and Savannah Steamboat Company v. Commonwealth*, 195 Mass. 386.

1887, 125.
1889, 446.
1894, 304.
4 Met. 181,
185.
13 Gray, 488.
12 Allen, 75,
316.
100 Mass. 183.
135 Mass. 258.
150 Mass. 155.
152 Mass. 372.
164 Mass. 142.
167 Mass. 517.
170 Mass. 354.

Horses, etc.
1821, 107, § 3.
1830, 151, § 2.
R. S. 7, § 10,
cl. 3.
1839, 139, § 2.
1857, 301, § 1.
G. S. 11, § 12,
cl. 3.
P. S. 11, § 20,
cl. 3.
8 Allen, 330.

Property of
persons under
guardianship.
R. S. 7, § 10,
cl. 4.
1855, 106.
1859, 258.
G. S. 11, § 12,
cl. 4.
P. S. 11, § 20,
cl. 4.

Trust
property.
R. S. 7, § 10,
cl. 5.
G. S. 11, § 12,
cl. 5.
P. S. 11, § 20,
cl. 5.
1894, 490.
5 Cush. 93.
6 Gray, 132.
6 Allen, 277.
105 Mass. 528.
124 Mass. 194.
140 Mass. 346.
145 Mass. 111.
147 Mass. 431.
165 Mass. 287.

Personal
property held

owner or any person having possession of the same on the first day of May. If machinery, located in a city or town other than that of which the owner is an inhabitant, is assessed therein and it is also assessed in the place of which the owner is an inhabitant, he may pay the taxes in the place where the machinery is located, and upon proof thereof to the collector of the place whereof he is an inhabitant, he shall be relieved from the payment of taxes therein on said machinery; but the place of which the owner is an inhabitant may bring suit against the place where the machinery is located to determine to which place the tax lawfully belongs.

Third, Horses, mules, neat cattle, sheep and swine kept throughout the year in cities or towns other than those in which the owners reside, whether such owners reside within or without the commonwealth, and horses employed in stages or other vehicles for the transportation of passengers for hire shall be assessed to the owners in the places where they are kept. 130 Mass. 478. 145 Mass. 110. 152 Mass. 594.

Fourth, Personal property belonging to persons under guardianship shall be assessed to the guardian in the city or town of which the ward is an inhabitant unless the ward resides and has his home without the commonwealth, in which case it shall be taxed to the guardian in the city or town of which he is an inhabitant.

2 Gray, 494. 4 Allen, 462. 105 Mass. 528. 145 Mass. 111.

Fifth, Personal property held in trust by an executor, administrator or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator or trustee in the city or town in which such other person resides, if within the commonwealth; and if he resides out of the commonwealth it shall be assessed in the place where the executor, administrator or trustee resides; and if there are two or more executors, administrators or trustees residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator or trustee is not an inhabitant of the commonwealth, it shall be assessed to the person to whom the income is payable, in the place where he resides, if it is not legally taxed to an executor, administrator or trustee under a testamentary trust in any other state.

Sixth, Personal property placed in the hands of a cor-

poration or individual as an accumulating fund for the future benefit of heirs or other persons shall be assessed to such heirs or persons, if within the commonwealth, otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property or of the income thereof.

121 Mass. 351. 123 Mass. 355. 124 Mass. 193. 147 Mass. 427.

Seventh, Personal property of deceased persons shall be assessed in the city or town in which the deceased last dwelt. Before the appointment of an executor or administrator it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him. After such appointment it shall be assessed to such executor or administrator for three years or until it has been distributed and notice of such distribution has been given to the assessors stating the name and residence of the several parties interested in the estate who are inhabitants of the commonwealth and the amount paid to each. After three years from the date of such appointment it shall be assessed according to the provisions of clause five of this section.

as an accumulating fund.
R. S. 7, § 10,
cl. 6.
G. S. 11, § 12,
cl. 6.
P. S. 11, § 20,
cl. 6.
13 Allen, 267.

Personal property of decedents.
R. S. 7, § 10,
cl. 7.
1848, 235.
1852, 234.
G. S. 11, § 12,
cl. 7.
1878, 189, § 2.
P. S. 11, § 20,
cl. 7.
5 Pick. 236.
4 Cush. 1.
6 Allen, 277.
97 Mass. 322.
102 Mass. 348.
123 Mass. 376.
149 Mass. 63.
154 Mass. 143.
161 Mass. 9.
176 Mass. 77.

Eighth, Personal property taxable as such, held in trust by assignees under the insolvent law or under any bankrupt law or any voluntary assignment for the benefit of creditors, shall be assessed to such assignees in the place where the insolvent, bankrupt or assignor had his principal place of business, if any; otherwise in the place of his residence.

— of insolvents, etc.
1882, 166.

Ninth, Personal property of joint owners or tenants in common, other than partners, shall be assessed to such owners according to their respective interests, in the cities or towns in which they respectively reside.

Personal property of joint tenants.
1882, 166.

CHAPTER 342, ACTS OF 1902.

AN ACT RELATIVE TO TAXING UNDERGROUND CONDUITS, WIRES AND PIPES LAID IN PUBLIC STREETS BY PRIVATE CORPORATIONS.

Be it enacted, etc., as follows:

SECTION 1. Section twenty-three of chapter twelve of the Revised Laws is hereby amended by adding thereto, after line eighty-four, the following paragraph:—

Tenth, Underground conduits, wires and pipes laid in

public streets by any corporation, except street railway companies, shall be assessed to the owners thereof in the cities or towns in which they are laid.

Separate assessment of personal property held in trust for several beneficiaries.
1878, 189, § 1.
P. S. 11, § 21.
124 Mass. 193.
145 Mass. 111.
165 Mass. 292.

SECTION 24. If personal property belonging to two or more persons under guardianship, or personal property held in trust by an executor, administrator or trustee, the income of which is payable to two or more persons, or if personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of two or more heirs or other persons, is assessed under the preceding section by the assessors of a city or town in whole or in part, they shall, upon request in writing, made within the time specified by them for the bringing in of lists under the provisions of section forty-one and stating the names, domicils and proportionate shares of such wards, cestuis que trust, heirs or other persons, make separate assessments so as to distinguish how much of such personal property is assessed in respect to each. If any such assessment is illegally made, the taxes paid thereon may be recovered back in an action at law in the same manner as in other cases of illegal assessment.

Ministerial fund.
R. S. 7, § 10, cl. 8.
G. S. 11, § 13.
P. S. 11, § 22.
19 Pick. 542.
12 Cush. 54.
147 Mass. 398.

SECTION 25. Real estate held by a religious society as a ministerial fund shall be assessed to its treasurer in the town in which it lies. Personal property so held shall be assessed in the town in which such society usually holds its meetings.

Personal property mortgaged.
R. S. 7, § 11.
G. S. 11, § 14.
P. S. 11, § 23.
1888, 413, § 20.
10 Met. 334.
10 Allen, 100.

SECTION 26. Personal property mortgaged or pledged shall for the purpose of taxation be deemed the property of the party in possession thereof on the first day of May and money deposited with a safe deposit, loan and trust company which can be withdrawn on demand or upon not more than ten days' notice shall be deemed to be money in possession of the person to whom it is payable.

Partners, how taxed.
R. S. 7, § 13.
1859, 114.
G. S. 11, § 15.
P. S. 11, § 24.
9 Cush. 268.
7 Gray, 132.
14 Allen, 366.
105 Mass. 526.
111 Mass. 322.
125 Mass. 351.

SECTION 27. Partners, whether residing in the same or in different cities or towns, may be jointly taxed under their firm name, in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels. If partners have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property

employed therein. If so jointly taxed, each partner shall be liable for the whole tax. 163 Mass. 444. 172 Mass. 383, 464. 130 Mass. 144. 133 Mass. 499. 137 Mass. 227. 140 Mass. 346.

[The following act is of interest to assessors when determining the question to whom property should be taxed.]

CHAPTER 539. ACTS OF 1907.

AN ACT RELATIVE TO RECORDING NAMES AND RESIDENCES OF PERSONS ENGAGED IN OR TRANSACTING BUSINESS UNDER NAMES OTHER THAN THEIR OWN, EITHER INDIVIDUALLY OR AS MEMBERS OF FIRMS OR PARTNERSHIPS.

Be it enacted, etc., as follows:

SECTION 1. Any person or persons conducting or transacting business in this commonwealth under any name, designation or title other than the real name or names of the person or persons conducting or transacting such business, whether individually or as a firm or partnership, shall file in the office of the clerk of the city or town in which the place or places of business or office or offices of any such person, firm or partnership may be situated, a certificate stating the full name and residence of each person engaged in or transacting such business. The clerk shall keep a record of such certificates, and an index of the names of such persons, firms and partnerships, entering in such index in alphabetical order the name of every person and the title under which he does business, and of every firm or partnership and the names of the members thereof.

SECTION 2. This act shall not apply to any corporation doing business under its true corporate name, nor to any firm or partnership doing business under any name, designation or title which includes the true surname of any partner, nor to associations duly authorized to transact insurance in the commonwealth under the provisions of section eighty-six of chapter one hundred and eighteen of the Revised Laws; nor to any firm, partnership, joint stock company or association the business of which is conducted or transacted by trustees under a written instrument or declaration of trust, provided that the names of such trustees with a reference to such instrument or declaration of trust shall be filed as provided in section one.

SECTION 3. Any person who violates the provisions of

this act shall be liable to a fine of not more than one hundred dollars for each month during which such violation continues.

Ships of co-partners, how assessed.
1859, 114.
G. S. 11, § 16.
1870, 323, § 1.
P. S. 11, § 25.
10 Gray, 97.
14 Allen, 369.
125 Mass. 351.

SECTION 28. Ships or vessels owned by a partnership shall be assessed to the several partners in their places of residence, if within the commonwealth, proportionally to their interests therein; but the interests of the several partners who reside without the commonwealth shall be assessed to the partnership in the place where its business is carried on.

SECTION 3, CHAPTER 374, ACTS OF 1902.

Persons or partnerships owning an interest in any such ship or vessel engaged in the foreign carrying trade shall annually, within thirty days after the first day of May, make a return under oath to the assessors of the city or town where such persons reside or where such partnerships are taxable under the provisions of section twenty-eight of chapter twelve of the Revised Laws, respectively, setting forth the name of the ship or vessel, their interest therein, and the value of such interest. If the assessors are satisfied of the truth of the return they shall assess an excise tax of one third of one per cent upon such interest; and the person or partnership making such return shall be exempt from any tax upon said interest other than that assessed under the provisions of this act.

EVASION OF TAXATION.

Agreement for under valuation as inducement to residence.
G. S. 11, § 26.
P. S. 11, § 26.
12 Allen, 599.

SECTION 29. Whoever in any way directly or indirectly proposes or agrees to an assessment on any specific or limited amount less than that for which he is liable by law to be taxed, with the purpose or as an inducement to make any particular place his residence for the purpose of taxation, shall be punished by a fine of one thousand dollars; and an assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

Evasion of taxation, etc., by concealment of residence, etc.
1864, 172.
§§ 1, 2.
P. S. 11, § 27.
124 Mass. 56, 148.
147 Mass. 592.

SECTION 30. Whoever avoids taxation by wilfully and designedly changing or concealing his residence, or by any other act with the intent so to avoid taxation, shall be punished by a fine of twice the amount of the last tax paid by him, or, if he has paid no tax in the commonwealth, by a fine of not less than one hundred nor more

than five thousand dollars; and he may be indicted in the county in which any of the acts or things made criminal by the provisions of this section are done or in the county in which he is liable to taxation.

SECTION 31. A shareholder in a corporation who, with intent to evade taxation, fraudulently transfers a share of its stock, or fraudulently causes or procures a certificate of a share to be issued to any person other than himself or in any name other than his own; or who refuses to inform, or wilfully misinforms, the corporation respecting his name or residence; or, having changed his residence to another city or town in the commonwealth, wilfully omits to give notice thereof to any corporation in the commonwealth in which he is a shareholder, shall forfeit one-half of the par value of the shares so transferred, issued to or owned by him in the stock of such corporation to the use of the city or town in which he resides.

For fraudulent transfers of stock.
1864, 201, § 4.
P. S. 11, § 28.
13 Gray, 539.

SECTION 32. Whoever, with intent to defeat or evade the provisions of law as to the assessment or payment of taxes, delivers or discloses to an assessor or assistant assessor a false or fraudulent list, return or schedule of property, as and for a true list of his estate not exempt from taxation, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

False returns or lists to assessors.
1869, 190.
P. S. 11, § 29.
112 Mass. 218.
134 Mass. 432.
137 Mass. 273.

SECTION 33. Keepers of taverns and boarding houses and masters and mistresses of dwelling houses, shall, upon application of an assessor of the city or town in which their house is situated, give the names of all persons residing therein who are liable to be assessed for taxes. Every such keeper, master or mistress refusing to give such information, or knowingly giving false information, shall be punished by a fine of twenty dollars for each offence.

Refusal, etc., of information by keepers of taverns, etc.
1837, 176.
G. S. 11, § 21.
P. S. 11, § 30.
137 Mass. 273.

DUTY AND MANNER OF ASSESSING TAXES.

SECTION 34. When a state tax is to be assessed, the treasurer and receiver general shall send his warrants for the assessment thereof by mail to the assessors of the several cities and towns.

P. S. 11, § 31.

SECTION 35. The assessors shall assess, according to the provisions of this chapter, state taxes for which they receive such warrants, county taxes duly certified to them,

Treasurer and receiver general to send his warrants.
R. S. 7, § 14.
G. S. 11, § 17.
1867, 166.
Assessment of taxes pursuant to this chapter.
1785, 50.
§§ 4, 8.

1821, 107, § 7.
R. S. 7, § 16.
G. S. 11, § 18.
1870, 332, § 2.
P. S. 11, § 32.
12 Met. 178.

city or town taxes voted by their respective cities or towns and all taxes duly voted and certified by fire and other districts therein.

117 Mass. 469.

119 Mass. 77.

126 Mass. 476.

Rate of taxation, how ascertained in places having national banks.
1868, 349, § 5.
1871, 390, § 4.
1872, 321, § 13.
1873, 315, § 4.
P. S. 11, § 33.
101 Mass. 575.

SECTION 36. Assessors of cities and towns in which a national bank or banking association is located shall, for the purpose of ascertaining the rate at which taxes shall be assessed, omit from the valuation upon which the rate is to be based the value of all shares held by non-residents of said cities and towns, and no tax of any city or town shall be invalidated by reason of any excess, in consequence of the provisions of this section, of the amount of such tax over the amount to be raised.

Amount of annual assessment.
Deductions.
1875, 209, § 1.
P. S. 11, § 34.
114 Mass. 592.

SECTION 37. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective cities or towns since the last preceding annual assessment and not provided for therein, of all amounts which are required by law to be raised by taxation by the said cities or towns during said year and of all amounts necessary to satisfy final judgments against the said cities or towns; but such assessments shall not include liabilities for the payment of which cities or towns have lawfully voted to contract debts. The assessors may deduct the amount of all the estimated receipts of their respective cities or towns, except from loans or taxes, which are lawfully applicable to the payment of the expenditures of the year from the amount required to be assessed; but such deduction shall not exceed the amount of such receipts during the preceding year.

Amount of annual assessment to include interest on debt for railroad subscriptions.
1876, 133, § 3.
P. S. 11, § 35.

SECTION 38. The assessors of a city or town owing debts incurred to obtain funds for subscriptions for the capital stock and securities of a railroad corporation shall annually assess, in addition to the other amounts required by law, an amount sufficient to pay the excess of such interest payable by such city or town, over any income received from such stock or securities.

Penalty on assessors for neglect of duty.
Appointment of substitutes.
1785, 50, § 4.
R. S. 7, §§ 17, 18.
G. S. 11, § 19.
P. S. 11, § 36.

SECTION 39. If the assessors neglect to assess a state, county, town or district tax required by law, each assessor so neglecting shall forfeit not more than two hundred dollars; and the commissioners of the respective counties shall forthwith appoint other persons to assess such taxes who shall take the same oath, perform the same duties and

be liable to the same penalties as assessors of cities and towns.

SECTION 40. If within five months after the receipt of a warrant from the treasurer and receiver general or of a certificate from the county commissioners requiring the assessment of a tax, it is not assessed and certified as required by law, the amount of the tax may be recovered of the city or town where the neglect occurs in an action of contract by the treasurer and receiver general or the treasurer of the county respectively.

Liability of town, etc., to action for tax not assessed. 1831, c. 4, § 2, 3. R. S. 8, § 37. G. S. 11, § 20. P. S. 11, § 37.

NOTICES AND LISTS.

[SECTION 41, repealed. Assessors, before making an assessment, shall give seasonable notice thereof to the inhabitants of their respective cities and towns. Such notice shall be posted in one or more public places in their cities and towns or shall be given in some other sufficient manner, and shall require the inhabitants to bring in to the assessors, before a date therein specified, true lists of all their polls and personal estate not exempt from taxation, and may or may not require them to include therein their real estate which is subject to taxation. It shall also require all persons and corporations, except corporations making returns to the insurance commissioner as required by section nineteen of chapter one hundred and eighteen, to bring in to the assessors, before a date therein specified, which shall not be later than the first day of July then following unless the assessors, for cause shown, extend the time to the first day of August, true lists of all real and personal estate held by them, respectively, for literary, benevolent, charitable or scientific purposes on the preceding first day of May or, at the election of such corporation, on the last day of its financial year last preceding said first day of May, and to state the amount of receipts and expenditures for said purposes during the year last preceding said days. The notice shall contain the provisions of section forty-five.]

Notice of assessment and lists of property. 1785, c. 50, § 9. R. S. 7, § 19. G. S. 11, § 22. 1877, c. 160, § 1. P. S. 11, § 38. 1882, c. 175, § 2. 217, § 1, 4. 1888, c. 323. 12 Met. 211. 8 Cush. 55. 8 Gray, 511. 1 Allen, 199. 100 Mass. 272. 101 Mass. 89. 114 Mass. 224. 131 Mass. 424. 135 Mass. 566. 137 Mass. 266. 154 Mass. 147. 160 Mass. 217. 166 Mass. 298.

CHAPTER 157, ACTS OF 1903.

AN ACT RELATIVE TO NOTICES OF ASSESSMENT TO BE GIVEN BY ASSESSORS.

Be it enacted, etc., as follows:

SECTION 1. *Section forty-one of chapter twelve of the Revised Laws is hereby amended by striking out the whole*

of said section and inserting in place thereof the following: — Section 41. Assessors before making an assessment shall give seasonable notice thereof to all persons, firms and corporations, domestic or foreign, subject to taxation in their respective cities and towns. Such notice shall be posted in one or more public places in each city or town, or shall be given in some other sufficient manner, and shall require the said persons, firms and corporations to bring in to the assessors, before a date therein specified, in case of residents a true list of all their polls and personal estate not exempt from taxation, and in case of non-residents and foreign corporations a true list of all their personal estate in that city or town not exempt from taxation, and may or may not require such list to include their real estate which is subject to taxation in that city or town. It shall also require all persons and corporations, except corporations making returns to the insurance commissioner as required by section nineteen of chapter one hundred and eighteen, to bring in to the assessors before a date therein specified, which shall not be later than the first day of July then following, unless the assessors for cause shown extend the time to the first day of August, true lists of all real and personal estate held by them respectively for literary, temperance, benevolent, charitable or scientific purposes on the preceding first day of May, or at the election of such corporation on the last day of its financial year last preceding said first day of May, and to state the amount of receipts and expenditures for said purposes during the year last preceding said days. The notice shall contain the provisions of section forty-five.

Form of lists.
1882, 217, § 3.
1894, 294.

SECTION 42. The tax commissioner shall annually prepare instructions for bringing in the lists required by the preceding section and shall prescribe forms therefor so arranged that the statement of the person bringing it in will include all assessable property held by him, and the assessors shall furnish blank lists containing such instructions and forms to any person liable to taxation. The tax commissioner shall also cause forms for the lists and statements required by the preceding section relative to property held for literary, benevolent, charitable or scientific purposes to be printed and distributed to assessors.

SECTION 43. The assessors shall in all cases require a person bringing in a list to make oath that it is true. The oath may be administered by any of the assessors or by their secretary or head clerk. If the person bringing such list is absent from the place in which the tax is to be assessed during the whole period when such oath may be made, it may be administered by a notary public, whose jurat shall be duly authenticated by his seal.

Lists to be verified by oath.
1785, 50, § 9.
R. S. 7, § 20.
G. S. 11, § 23.
P. S. 11, § 39.
1891, 381.
1 Allen, 199.
101 Mass. 89.
131 Mass. 424.

SECTION 44. Such lists shall be open to the inspection of the assessors, their assistants and clerks and of the tax commissioner and his deputy, but so much of the lists as shows the details of the personal estate to that of no other person except by the order of a court. The lists shall be preserved by the assessors until the tax commissioner orders them to be destroyed.

Inspection of lists.
1898, 507, § 1.

SECTION 45. A mortgagor or mortgagee of real estate may bring in to the assessors of the city or town in which it lies, within the time prescribed by the notice under section forty-one, a statement under oath of the amount secured thereon or on each separate parcel thereof, with the name and residence of every holder of an interest therein as mortgagor or mortgagee. If such property is situated in two or more places, or if a recorded mortgage includes two or more estates or parts of an estate as security for one sum, such statement shall include an estimate of the interest of the mortgagee in each estate or part of an estate. The assessors shall, from such statement or otherwise, ascertain the proportionate interests of the mortgagor or mortgagee respectively in said estates, and shall assess the same accordingly. If, in any year, such statement is not brought in, the tax for that year on such real estate shall not be invalid merely for the reason that the interest of the mortgagee therein has not been assessed to him.

Returns by mortgagor or mortgagee.
1882, 175, § 1.

SECTION 46. They shall receive as true, except as to valuation, the list brought in by each person, unless, on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.

Lists to be taken as true, unless.
1785, 50, § 9.
R. S. 7, § 22.
G. S. 11, § 25.
P. S. 11, § 40.
12 Met. 211.
8 Cush. 64.

10 Allen, 100. 112 Mass. 218. 131 Mass. 424. 134 Mass. 431. 166 Mass. 298.

SECTION 47. They shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any

Estimate of value, in default of list.
1785, 50, § 1.
R. S. 7, § 23.

G. S. 11, § 27.
P. S. 11, § 41.
8 Cush. 63.
2 Allen, 594.
130 Mass. 565.

Estimate to be
conclusive,
when.
1785, 50, § 9.
R. S. 7, § 24.
G. S. 11, § 28.
P. S. 11, § 42.
4 Met. 181.
5 Cush. 97.

— of person-
alty, how made
and entered.
1879, 72, § 1.
P. S. 11, § 43.
137 Mass. 270.
170 Mass. 356.

person who has not brought in such list, and shall estimate its just value, according to their best information and belief.

137 Mass. 270.

152 Mass. 372.

SECTION 48. Such estimate shall be entered in the valuation book, and, except as provided in sections forty-one and seventy-four, shall be conclusive upon any person who has not seasonably brought in a list of his estate, unless he can show a reasonable excuse for the omission. 8 Cush. 63.

[SECTION 49, repealed. In making such estimate the assessors shall specify the amount of each class of personal property mentioned in clauses eight, nine, ten and eleven, in section sixty, and enter the same upon the books furnished under section fifty-eight. An error or overestimate of any class shall not be taken into account in determining whether a person is entitled to an abatement, but only the aggregate amount of such estimates.]

CHAPTER 111, ACTS OF 1902.

AN ACT TO REPEAL THE LAW REQUIRING ASSESSORS TO SPECIFY THE AMOUNT OF CERTAIN CLASSES OF PERSONAL PROPERTY.

Be it enacted, etc., as follows:

SECTION 1. Section forty-nine of chapter twelve of the Revised Laws is hereby repealed.

Last assess-
ment on ex-
ecutor, etc.,
to be deemed
the valuation
in default of
list.
1878, 189, § 3.
P. S. 11, § 44.
154 Mass. 146.

SECTION 50. After personal property has been legally assessed in any city or town to an executor, administrator or trustee, an amount not less than that last assessed by the assessors of such city or town in respect of such property shall be deemed to be the sum assessable, until a true list of such property is brought in to the assessors in accordance with the provisions of section forty-one.

ASSESSMENT OF TAXES.

Valuation.
1785, 50, § 1.
R. S. 7, § 24.
1853, 319, § 1.
G. S. 11, § 24.
P. S. 11, § 45.
1889, 115.
4 Gray, 254.
162 Mass. 372.
State, county
and town taxes
in one assess-
ment.
1785, 50, § 14.

SECTION 51. The assessors of each city and town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and, in cities, the assessors may, in any year, divide any ward into convenient assessment districts. 163 Mass. 283.

SECTION 52. The assessors may include state, county and town taxes, or any two of them, in the same assessment. 1823, 138, § 2. R. S. 7, § 25. G. S. 11, § 29. P. S. 11, § 46.

SECTION 53. In the city of Boston all taxes assessed for county or city purposes may be assessed separately as county taxes and as city taxes, or under the name of city taxes only, as the city council shall direct. The city of Chelsea and the towns of Revere and Winthrop shall not be taxed for county purposes.

County and city taxes in Boston.
1821, 109, § 13.
R. S. 7, § 26;
14, § 34.
G. S. 11, § 30.
P. S. 11, § 47.
21 Pick. 64.

SECTION 54. The taxes assessed on property exclusive of the state tax, county tax and sums required by law to be raised on account of the city debt shall not in any year exceed twelve dollars in any city on every one thousand dollars of the assessors' valuation of the taxable property therein for the preceding year, said valuation being first reduced by the amount of all abatements allowed thereon previous to the thirty-first day of December in the year preceding said assessment, subject to the following provisions:—If the city council of a city which contains less than one hundred thousand inhabitants according to the last preceding national or state census so determines, the average of the assessors' valuation of the taxable property therein for the preceding three years, said valuation for each year being first reduced by the amount of all abatements allowed thereon previous to the thirty-first day of December in the year preceding said assessment, shall be used to determine said limit of taxation instead of said assessors' valuation of the preceding year. In the city of Boston, and in all cities which contain one hundred thousand inhabitants or more according to the census aforesaid, said average shall be so used. In the city of Boston, said taxes shall not exceed ten and one-half dollars instead of twelve dollars as aforesaid. Any order or appropriation requiring a larger assessment than is herein limited shall be void. The provisions of this section shall not affect any existing exemption from the operation of the corresponding provisions of earlier laws.

Rate of taxation in cities.
1885, 178, § 1;
312, § 1.
1887, 281.
1893, 247, 445.
1900, 399.
1901, 264.

SECTION 55. The assessors may, for the purpose of avoiding fractional divisions of the amount to be assessed in the apportionment thereof, add to that amount not more than five per cent thereof, although the limit of taxation may by such overlay be exceeded.

Overlay of taxes.
1785, 50, § 11.
1828, 143, § 4.
R. S. 7, § 28.
G. S. 11, § 32.
P. S. 11, § 49.
1887, 226.
1893, 445.

126 Mass. 97.

SECTION 56. The assessors shall make, upon the books furnished under the provisions of section fifty-eight, a list of the valuation and the assessment thereon, in the fol-

Assessors to make valuation list in books, and deposit copy in office.

1785, 50, § 8.
 1823, 139, § 3.
 R. S. 7, § 29.
 G. S. 11, § 33.
 1861, 167.
 P. S. 11, § 50.
 1888, 307.
 1898, 507, § 2.
 2 Gray, 298.
 2 Allen, 594.
 102 Mass. 148.
 127 Mass. 505.

List to exhibit
 valuation of
 residents and
 non-residents.
 1828, 143, § 5.
 R. S. 7, § 30.
 G. S. 11, § 34.
 1861, 167.
 P. S. 11, § 51.
 21 Pick. 64.
 16 Gray, 293.
 2 Allen, 594.
 102 Mass. 151.
 151 Mass. 228.

lowing manner:—In separate columns the valuation of the stock in trade of each person, the number and value of his live stock and the valuation of machinery used in manufacturing establishments. In another column marked "All other ratable estate" the aggregate valuation of all the other personal estate shall be entered. The total amount of the taxable personal property shall be shown, but without other detail or specification than is provided herein. Before the taxes are committed for collection they shall deposit the books, or an attested copy thereof, in their office, or, if there is no office, with their chairman, for public inspection.

SECTION 57. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; the second part shall exhibit the valuation and assessment of the estates of non-resident owners, and shall contain in separate columns, the names of the non-resident owners of the property assessed, or such description of them as can be given, their places of abode, if known, the description of their estate, the true value of such estate, and the tax thereon.

CHAPTER 387, ACTS OF 1908.

AN ACT RELATIVE TO THE VALUATION LISTS PREPARED BY ASSESSORS.

Be it enacted, etc., as follows:

SECTION 1. *Section fifty-seven of chapter twelve of the Revised Laws is hereby amended by striking out the words "first part of the", in the first line, by striking out the words "the second part shall exhibit", in the third line, and inserting in place thereof the word:—and,— and by striking out the words "in separate columns", in the fourth line, so as to read as follows:—Section 57. The list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and the valuation and assessment of the estates of non-resident owners, and shall contain the names of the non-resident owners of the property assessed, or such description of them as can be given, their places of abode, if known, the description of their estate, the true value of such estate, and the tax thereon.*

CHAPTER 314, ACTS OF 1908.

AN ACT RELATIVE TO THE FURNISHING OF CERTAIN BOOKS
TO ASSESSORS AND THE FILING OF CERTAIN RETURNS BY
THEM.

Be it enacted, etc., as follows:

SECTION 1. *The books for the use of assessors now required by sections fifty-eight and sixty-three of chapter twelve of the Revised Laws to be furnished to cities and towns by the secretary of the commonwealth shall hereafter be furnished by the tax commissioner; and the returns and reports now required by sections sixty, sixty-one, sixty-three and ninety-four of said chapter to be made to the secretary of the commonwealth shall hereafter be made to the tax commissioner. The compilation now required by said section sixty-three to be prepared by the secretary of the commonwealth shall hereafter be prepared by the tax commissioner.*

SECTION 58. The secretary of the commonwealth shall provide each city and town, on or before the first day of May annually, suitable books for the use of the assessors in the assessment of taxes, which shall contain blank columns, with uniform headings for a valuation list, and blank tables for aggregates in the following form: —

Secretary of
common-
wealth to fur-
nish books to
assessors.
1861, 167, § 1.
1879, 72, § 2.
P. S. 11, § 52.
1883, 41, § 1.
1887, 86, § 2.
1890, 242, § 2.

SECTION 2. *The first paragraph of section fifty-eight of said chapter twelve, as amended by chapter three hundred and fourteen of the acts of the year nineteen hundred and eight, is hereby further amended by striking out the word "secretary", in the first line, and inserting in place thereof the words: — tax commissioner, — and by inserting after the word "form", in the sixth line, the words: — provided, however, that in lieu of the valuation list provided for in this section and the preceding two sections, the assessors of any city may, with the assent of the tax commissioner, prepare a valuation list upon books furnished by the city and in such form as the tax commissioner shall approve, — so that the first paragraph of said section will read as follows: — The tax commissioner of the commonwealth shall provide each city and town, on or before the first day of May annually, suitable books for the use of the assessors in the assessment of taxes, which shall contain blank columns, with uniform headings for a valuation*

Tax for state, county and city or town purposes, including overlayings.		Rate of total tax per \$1,000.	Number of horses assessed.	Number of cows assessed.	Number of sheep assessed.	Number of neat cattle, other than cows, assessed.	Number of swine assessed.	Number of dwelling houses assessed.	Number of acres of land assessed.	Number and value of fowl assessed.
Dollars.	Cts.									
On personal estate.										Number.
On real estate.										Value.
On polls.										
Total.										

CHAPTER 181, ACTS OF 1907.

AN ACT RELATIVE TO THE FORM OF VALUATION LISTS FOR THE USE OF ASSESSORS IN THE ASSESSMENT OF TAXES.

Be it enacted, etc., as follows:

SECTION 1. *Section fifty-eight of chapter twelve of the Revised Laws is hereby amended by striking out in the form of valuation lists therein contained the columns entitled "Superficial Feet of Wharf" and "Value of Same", and inserting in place thereof one column, entitled:— Total Value of Each Parcel of Real Estate,— so that the headings of the columns of said form shall be as follows:—*

Names and residences of persons assessed (Give street and number of residence).

Number of taxable polls.

Total cash tax on polls.

Value of each person's whole stock in trade.

Value of machinery used in manufacturing establishments.

Number of live stock, each kind specified separately.

Value of each kind of live stock.

Value of all other ratable personal estate in one item.

Aggregate of each person's ratable personal estate.

Total tax on personal estate.

Buildings of all kinds, described by naming their uses.

Value of buildings, exclusive of land.

Description, by name or otherwise, of each and every lot of land owned by each person.

Number of acres or feet in each lot of land. } *Acres*
Value of same. } *Feet*
Total value of each parcel of real estate.
Aggregate value of real estate.
Total tax on real estate.
Total cash tax on polls, personal and real estate.

How blanks in list shall be filled.

1861, 167, § 2.
 1879, 72, § 1.
 P. S. 11, § 53.
 1883, 41, § 2.
 1898, 507, § 2.
 127 Mass. 502.
 138 Mass. 529.
 143 Mass. 299.
 151 Mass. 227.
 152 Mass. 372.

SECTION 59. The assessors shall enter in the books so furnished the valuation and assessment of the polls and estates of the inhabitants assessed, as directed in the headings of the various columns and as follow: —

Stock in trade shall include all goods, wares and merchandise at home or abroad, of ratable estate, whether paid for or otherwise. Machinery shall include steam engines.

In cotton and linen factories state number of spindles and looms used in each.

In woollen factories state number of sets of cards used in each.

185 Mass. 114.

State the value of each building described including therein water-wheels but excluding land and water power and machinery used in the building.

In description of lots of land state the number of quartz-sand beds, stone quarries and ore beds therein.

Assessors to fill up table of aggregates and deposit copy with secretary of commonwealth annually.

1861, 167, § 3.
 1864, 210, § 2.
 1879, 72, § 2.
 P. S. 11, § 54.
 1885, 106.
 1886, 56.
 1887, 86, § 1.
 1890, 242, § 1.
 1891, 65.

SECTION 60. The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessments required by law, and shall annually, on or before the first day of October, deposit in the office of the secretary of the commonwealth an attested copy of the same, containing, — First. The number of residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Second. The number of non-residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Third. The whole number of persons assessed, specifying the number assessed for a tax on property and the number assessed for a poll tax only. Fourth. The number of polls assessed. Fifth. The tax on each poll. Sixth. The value of personal estate assessed, specifying the value of the same excluding resident bank stock, and the value of resident bank stock. Seventh. The value of real estate assessed, specifying

the value of buildings exclusive of land and of land exclusive of buildings. Eighth. The total valuation of assessed estate in the city or town. Ninth. The tax for state, county and city or town purposes, including overlays, specifying the amount assessed on personal estate, on real estate and on polls. Tenth. The rate of total tax per one thousand dollars. Eleventh. The number of horses assessed. Twelfth. The number of cows assessed. Thirteenth. The number of sheep assessed. Fourteenth. The number of neat cattle, other than cows, assessed. Fifteenth. The number of swine assessed. Sixteenth. The number of dwelling-houses assessed. Seventeenth. The number of acres of land assessed. Eighteenth. The number and value of fowl assessed.

The city of Boston may deposit said copy in the office of the secretary annually on or before the first day of November.

SECTION 61. The assessors of cities and towns, except the city of Boston, shall, on or before the first day of October in the year nineteen hundred and four and in every third year thereafter, deposit in the office of the secretary of the commonwealth, in books to be by him provided for the purpose, a copy of the assessors' valuation-books of those years, to be by them certified under oath. Said assessors shall also annually, on or before the first day of October, and the assessors of the city of Boston, on or before the first day of November, in like manner deposit an attested copy of the table of aggregates required by the provisions of the preceding section.

Assessors triennially to deposit with the secretary of the commonwealth copies of valuation books.
1861, 167, § 3.
1864, 210, § 1.
P. S. 11, § 56.
1883, 91.
1894, 318.

SECTION 62. If the board of assessors of any city or town neglect to comply with the provisions of any of the three preceding sections, each assessor so neglecting shall forfeit not more than two hundred dollars. [1 Op. A. G. 73.]

Non-compliance with preceding sections.
1861, 167, § 5.
P. S. 11, § 56.

SECTION 63. The books provided by the secretary of the commonwealth for the use of the assessors shall contain a copy of this and of the seven preceding sections, and such certificates as are required by law to be signed by the assessors, with such explanatory notes as he considers necessary to secure uniformity of returns under the several headings. He shall annually compile and cause to be printed for the use of the general court the aggregate returns from the cities and towns arranged by counties,

Books supplied by secretary to contain what.

Annual compilation of table of aggregates.
1861, 167, § 4.
P. S. 11, § 57.

Entry on valuation list of certain exempted property.
1874, 227, § 1.
P. S. 11, § 58.

so as to exhibit the total valuation of the towns, cities, counties, and the commonwealth.

SECTION 64. The assessors shall enter upon the valuation list, in the appropriate columns, after the enumeration of the persons and estates liable to taxation therein contained, a statement and description of all the property and estate and the fair ratable value thereof, situated in their respective cities or towns, or which would be taxable there but for the provisions of the third, fourth and seventh classes of section five, with the names of the persons or corporations owning the same and the purpose for which it is used, which are exempted from taxation by the provisions of law aforesaid, with a reference to the law by which such exemption is allowed.

Oath of assessors to valuation list.
1785, 50, § 3.
R. S. 15, § 55.
1853, 319, § 2.
G. S. 11, § 36.
P. S. 11, § 59.

SECTION 65. The assessors, or other persons authorized to assess the taxes in a city or town, shall, at the end of said valuation list, subscribe and take the following oath:—

We the assessors, (or other persons so authorized, as the case may be,) of _____, do severally and solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in _____, (here insert the name of the city or town,) during the present year, and that the real and personal estate contained in said list, and assessed upon each person in said list, is a full and accurate assessment upon all the property of each person, liable to taxation, at its full and fair cash value, according to our best knowledge and belief.

Penalty for failure to take oath.
1857, 306,
§§ 1, 2.
G. S. 11, § 37.
P. S. 11, § 60.

SECTION 66. An assessor or other person assessing taxes in a city or town who omits to take and subscribe said oath shall be punished by a fine of ten dollars; but such omission shall not render invalid a tax otherwise legally assessed.

COLLECTOR'S LIST AND WARRANT.

Tax list to be committed to collector, but only after bond given and approved.
1785, 50, § 6;
70, §§ 1, 3.
1815, 130, § 4.
R. S. 7, §§ 32, 34.
G. S. 11, § 38.
1879, 157, § 1.
P. S. 11, § 62.
13 Met. 85.

SECTION 67. The assessors shall, within a reasonable time, commit the tax list with their warrant to the collector of taxes; or, if no collector has been chosen, to a constable, or, if there is no constable, to the sheriff or his deputy, for collection; but the assessors of a town shall not commit a tax list to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law. 6 Gray, 387, 502.

99 Mass. 472. 124 Mass. 343 130 Mass. 563. 140 Mass. 389.

SECTION 68. The tax list committed to the collector shall be, in substance, as follows:—

Names and Residences. (Give street and number of residence.)	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when paid.
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Tax list, contents and form.
1828, 143, § 6.
R. S. 7, § 31.
G. S. 11, § 35.
1877, 235, § 1.
P. S. 11, § 61.
9 Pick. 97.
2 Gray, 298.

NON-RESIDENTS.

Names.	Residences, if known.	Tax.	
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SECTION 69. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when and the person to whom he shall pay them, shall be substantially in the form heretofore used and need not be under seal. 1 Met. 328. 6 Met. 345. 13 Met. 85.
99 Mass. 472. 127 Mass. 502. 139 Mass. 388. 140 Mass. 389.

Warrant, contents and form.
1785, 50, § 6;
70, § 1.
R. S. 7, §§ 32, 33.
G. S. 11, § 39.
P. S. 11, § 63.

SECTION 70. If a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant. G. S. 11, § 40. P. S. 11, § 64.

New warrant to issue on loss, etc., of original; effect.
1799, 83.
R. S. 8, § 51.

DISCOUNT AND INTEREST ON TAXES.

SECTION 71. Towns at their annual meetings and city councils of cities may allow discounts to persons making voluntary payment of their taxes within such periods of time as they determine; and the assessors shall, when they commit their warrant to the collector, post in one or more public places in the city or town notices of the rates of discount, and the collector shall make such discount.

Discounts.
1815, 130,
§§ 2, 4.
R. S. 7, §§ 35, 36.
G. S. 11,
§§ 41, 42.
P. S. 11, §§ 65, 66.
13 Gray, 476.
2 Allen, 594.

SECTION 72. If a city, a town or fire, water supply or improvement district fixes a time within which taxes assessed therein shall be paid, such city by its city council, and such town or district at the meeting when money is appropriated or raised, may vote that on all taxes remaining unpaid after a certain time interest shall be paid at a specified rate, not exceeding six per cent a year, and such interest shall be added to and be a part of such taxes.

Interest; city and town taxes.
1873, 225, § 1.
1878, 185, § 1.
1879, 74.
P. S. 11,
§§ 67, 68.
1900, 168.
140 Mass. 476.

ABATEMENTS.

SECTION 73. A person aggrieved by the taxes assessed upon him may, within six months after the date of his tax bill, apply to the assessors for an abatement thereof; and

Abatements.
1785, 50, § 10.
R. S. 7, §§ 37, 41.
G. S. 11,
§§ 43, 47.

1877, 160, § 2.
 P. S. 11.
 §§ 69, 74.
 1888, 315.
 6 Pick. 98.
 12 Pick. 7.
 21 Pick. 64.
 5 Cush. 93.
 8 Cush. 55, 56.
 2 Gray, 484.
 8 Gray, 509.
 13 Gray, 321.
 3 Allen, 546.
 12 Allen, 612.
 13 Allen, 119.

Conditions.
 1785, 50, § 9.
 R. S. 7, § 40.
 1853, 319, § 3.
 1857, 306, § 3.
 G. S. 11, § 46.
 1865, 121.
 1877, 160, § 1.
 P. S. 11, §§ 38,
 72, 73.
 1888, 315.
 1894, 354.
 4 Pick. 399.
 5 Cush. 97.
 6 Cush. 477.
 5 Gray, 365.
 8 Gray, 509.
 1 Allen, 199.
 3 Allen, 546.
 101 Mass. 87.
 112 Mass. 218.
 131 Mass. 424.
 137 Mass. 272.
 151 Mass. 228.
 152 Mass. 374.
 155 Mass. 313.
 166 Mass. 216.
 167 Mass. 517.
 170 Mass. 568.
 176 Mass. 384.

Costs.
 R. S. 7, § 38.
 G. S. 11, § 44.
 Notice.
 1890, 127, § 6.

Appeal to
 county com-
 missioners.
 1785, 50, §§ 9,
 10.
 R. S. 7, §§ 39,
 40.
 1853, 319, § 3.
 1857, 306, § 3.
 G. S. 11, §§ 46,
 46.
 P. S. 11, §§ 71,
 72.
 1882, 218.
 8 Cush. 55.

if they find that he is taxed at more than his just proportion, or upon an assessment of any of his property in excess of its fair cash value, they shall make a reasonable abatement. A tenant of real estate paying rent therefor and under obligation to pay more than a moiety of the taxes thereon may apply for such abatement.

102 Mass. 348.	130 Mass. 144.	152 Mass. 372.	166 Mass. 216.
109 Mass. 270.	478.	596.	298, 401.
114 Mass. 224.	148 Mass. 513.	155 Mass. 313.	174 Mass. 396.
125 Mass. 348.	150 Mass. 237.	159 Mass. 385.	175 Mass. 293.

SECTION 74. A person shall not have an abatement, except as otherwise provided, unless he has brought in to the assessors the list of his estate as required by section forty-one. An executor, administrator or trustee after three years from the date of his appointment, or a tenant of real estate paying rent and under obligation to pay more than a moiety of the taxes thereon, may have an abatement although no such list was brought in. If such list is not filed within the time specified in the notice required by section forty-one, no part of the tax assessed upon the personal estate shall be abated unless the applicant shows to the assessors a reasonable excuse for the delay or unless such tax exceeds by more than fifty per cent the amount which would have been assessed upon such estate if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. If the applicant was not required by said notice to include his real estate in said list, and has not done so, he shall, if he seeks an abatement of the tax on his real estate, file with his application a list, verified as provided in section forty-three, of his real estate, with an estimate of the fair cash value of each parcel.

SECTION 75. A person applying for an abatement shall pay the legal costs which accrue before it is made. P. S. 11, § 70.

SECTION 76. The assessors shall, within ten days after their decision upon an application for an abatement, give written notice thereof to the applicant.

SECTION 77. A person aggrieved by the refusal of assessors to abate a tax, may, within thirty days after receiving the notice provided in the preceding section, appeal therefrom by filing a complaint with the clerk of the county commissioners, or of any board exercising the powers of such commissioners, for the county in which the property taxed is situated, and if upon a hearing the board finds that the property has been overrated, it shall

make a reasonable abatement and an order as to costs. If the list required to be brought in to the assessors was not brought in within the time specified in the notice required by section forty-one, the tax shall not be abated unless the appellate board finds that there was good cause for the delay or unless the assessors have so found as provided in section seventy-four. No costs shall be allowed to a complainant who has failed to file a list as required by law.

6 Allen, 131.
114 Mass. 224.
152 Mass. 372,
596.
155 Mass. 313.
159 Mass. 383.

SECTION 78. A person aggrieved as aforesaid may, instead of pursuing the remedy provided in the preceding section, but subject to the same conditions, appeal to the superior court for the county in which the property taxed is situated by entering a complaint in said court on the first return day after the expiration of thirty days from the giving of the notice required by section seventy-six, which shall be heard and determined as other court causes by the court sitting without a jury.

Appeal to
superior court.
1890, 127, §§ 1,
2, 4.
152 Mass. 594.
155 Mass. 313.
163 Mass. 283.
175 Mass. 257.

SECTION 79. The complaint shall be heard at the first sitting of the court in such county for the trial of civil causes after its entry, unless, at the request of the respondent, a further time is allowed by the court. The superior court or the supreme judicial court, if the case shall be carried thereto, shall at the request of the city or town advance the case so that it may be heard and determined with as little delay as possible.

Entry of ap-
peal. Advance-
ment for
speedy trial.
1890, 127, § 4.
152 Mass. 596.
155 Mass. 313,
316.
175 Mass. 257.

SECTION 80. The court may appoint a commissioner to hear the parties and report the facts, with or without the evidence. Such report shall be prima facie evidence of the facts therein found. The court shall allow such commissioner a reasonable compensation which shall be paid by the county.

Commission-
ers to hear
facts.
1890, 127, § 5.
175 Mass. 257.

SECTION 81. If, upon a hearing, the court finds that the complainant has complied with all the provisions of law and has paid the tax for which he has been assessed, it may grant him a reasonable abatement, and shall render judgment against the city or town for the amount thereof, and for all charges and interest on the amount of the abatement from the date of the payment of the tax. The court may also, if the complainant has filed a list of his estate as required by section forty-one, allow him costs in its discretion. If no abatement is granted, judgment shall be rendered for the city or town for its expenses and costs, which shall be taxed by the court.

Abatement or
judgment for
appellant if
taxes have
been paid.
Costs.
1890, 127, § 3.
1895, 75.
6 Allen, 131.
155 Mass. 313.
316.
175 Mass. 257.

Reimbursement after abatement.
1785, 50, § 10.
R. S. 7, § 42.
G. S. 11, § 48.
P. S. 11, § 75.
1894, 207.
13 Gray, 223.
3 Allen, 550.
159 Mass. 385.
Certificate of abatement to be given by assessors.
R. S. 7, § 43.

SECTION 82. A person whose tax has been abated shall, if the tax has been paid, be reimbursed by the city or town to the amount of the abatement allowed, with interest from the time of payment of said tax and all charges paid therewith except legal costs paid as provided in section seventy-five.

SECTION 83. A person whose tax has been abated shall be entitled to a certificate thereof from the assessors, clerk of the commissioners or other proper officer.

G. S. 11, § 49.

P. S. 11, § 76.

159 Mass. 385.

Abatement of uncollectible taxes, and allowance to collector therefor.
1878, 77.
1879, 43.
P. S. 11, § 77.

SECTION 84. If a collector is satisfied that a poll tax or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, under oath, stating the reason why such tax cannot be collected. The assessors, after due inquiry, may abate such tax or any part thereof, and shall certify such abatement in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated. But no poll tax shall be abated within the calendar year in which it is assessed.

Poll tax not abatable in year of assessment.

CHAPTER 91, ACTS OF 1902.

AN ACT RELATIVE TO THE ABATEMENT OF CERTAIN POLL TAXES.

Be it enacted, etc., as follows:

SECTION 1. *Section eighty-four of chapter twelve of the Revised Laws is hereby amended by inserting after the words "But no poll tax shall be abated", in the eleventh line, the words:—under the provisions of this section,—so as to read as follows:—Section 84. If a collector is satisfied that a poll tax or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, under oath, stating the reason why such tax cannot be collected. The assessors, after due inquiry, may abate such tax or any part thereof, and shall certify such abatement in writing to the*

collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated. But no poll tax shall be abated, under the provisions of this section, within the calendar year in which it is assessed.

CHAPTER 442, ACTS OF 1904.

AN ACT RELATIVE TO THE ASSESSMENT OF TAXES UPON CORPORATIONS AND TO THE ABATEMENT THEREOF.

Be it enacted, etc., as follows:

SECTION 1. Whenever an abatement is finally made to any corporation organized under the law of this commonwealth and liable to a corporate franchise tax upon any tax assessed by the assessors of any city or town, upon or in respect of real estate, machinery or underground conduits, wires and pipes, the assessors, commissioners or court granting such abatement shall forthwith notify the tax commissioner of the commonwealth thereof, and shall state in such notice what sum was determined by such assessors, commissioners or court to have been the full and fair cash value of such real estate, machinery or underground conduits, wires and pipes on the first day of May on which the tax so abated was originally assessed.

OMITTED ASSESSMENTS.

SECTION 85. If the real or personal estate of a person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the annual assessment of taxes in a city or town, the assessors shall between the fifteenth and twentieth days of December next ensuing assess such person for such estate. The taxes so assessed shall be entered on the tax list of the collector who shall collect and pay over the same. Such additional assessment shall not render the tax of such city or town invalid although its amount, in consequence thereof, shall exceed the amount authorized by law to be raised.

Assessment of
estates omitted
from annual
assessment.
1868, 320.
1873, 272.
P. S. 11, § 78.
1886, 85.
1888, 362.
130 Mass. 561.
137 Mass. 272.

RE-ASSESSMENT OF TAXES.

SECTION 86. Every tax except a poll tax, which is invalid by reason of any error or irregularity in the assessment and which has not been paid, or which has been recovered back, may be re-assessed by the assessors for the

Re-assessment
of taxes.
1859, 118, § 1.
G. S. 11, § 53.
1881, 304, § 7.
P. S. 11, § 79.
13 Allen, 269.

99 Mass. 32,
208.
102 Mass. 73.
112 Mass. 535.
121 Mass. 177.
126 Mass. 97.
127 Mass. 502.
129 Mass. 378.
137 Mass. 274.
149 Mass. 270.
165 Mass. 287.

time being, to the just amount to which, and upon the estate or to the person to whom, it ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not. An alienation of the real estate assessed shall not, subject to the provisions relative to a lien contained in section thirty-five of chapter thirteen, defeat a re-assessment, if made within two years after the tax first assessed was committed to the collector.

Collection of
re-assessed
taxes.
1870, 394.
P. S. 11, § 80.
102 Mass. 72.
149 Mass. 270.

SECTION 87. Taxes re-assessed under the provisions of the preceding section shall be committed to, and collected and paid over by, the collector for the time being, in the same manner as other taxes, except that the name of the person to whom they were originally assessed shall be stated in the tax list; and the bond of such collector shall apply to such re-assessed taxes.

APPORTIONMENT OF TAXES ON REAL ESTATE SUBSEQUENTLY DIVIDED.

Apportion-
ment of tax on
real estate
divided after
assessment.
1878, 182, § 1.
P. S. 11, § 81.

SECTION 88. If real estate is divided by sale, mortgage, upon a petition for partition or otherwise after a tax has been assessed thereon and such division has been duly recorded in the registry of deeds, the assessors at any time before said real estate has been sold for payment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax and the costs and interest accrued thereon upon the several parcels thereof, in proportion to the value of each, and only the portion of said tax, interest and costs so apportioned upon any such parcel shall continue to be a lien upon it; and the owners or mortgagees shall be liable only for the tax apportioned upon the parcel owned in whole or in part by them respectively.

Notice to
persons
affected by ap-
portionment.
1878, 182, § 2.
P. S. 11, § 82.

SECTION 89. Assessors shall send notice of the request for such apportionment and of the time appointed therefor, by mail, to every person interested in said real estate whose address is known to them.

Appeal from
apportion-
ment.
1878, 182, § 3.
P. S. 11, § 83.

SECTION 90. A person aggrieved by any action of the assessors in making such apportionment may within seven days thereafter appeal in like manner as in case of an over-assessment, and the decision upon such appeal shall be final.

ILLEGAL ASSESSMENTS.

SECTION 91. If, by reason of an erroneous or illegal assessment or apportionment of taxes, a person is assessed more than his due proportion, the tax and assessment shall be valid except as to the illegal excess.

Assessment of taxes valid except as to illegal excess. 1859, 118, § 4. G. S. 11, § 54. P. S. 11, § 84.

99 Mass. 208. 126 Mass. 97, 98. 127 Mass. 502. 151 Mass. 229.

ADDITIONAL DUTIES OF ASSESSORS.

SECTION 92. When a person who is liable to be taxed for personal property changes his domicile, the assessors of the city or town to which he has removed shall forthwith require of the assessors of the city or town in which he was last taxed a written statement of any facts which will assist in determining the value of his personal estate, and also the amount for which he was last assessed therein, which information shall be furnished by said assessors. When the assessors of a city or town receive notice from the assessors of another city or town of the amount for which a person, who had been an inhabitant thereof, was last taxed on personal property, such notice or statement shall be filed in the office of the assessors requiring such information and shall be open to public inspection; and he shall not be assessed upon any less amount of personal estate than that for which he was last assessed, until he has brought in a list of his personal estate. Whoever neglects to perform any duty imposed upon him by the provisions of this section shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Assessors to furnish information as to personalty of persons changing domicile. 1866, 170. 1881, 25. P. S. 11, § 85.

SECTION 93. Assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit and established in their respective cities and towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery, owned by each of said corporations and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or

Returns to tax commissioner of corporate property and amount of taxes laid. 1864, 208, § 1. 1865, 283, §§ 1, 14. P. S. 11, §§ 86, 87. 13 Allen, 391.

voted to be laid, within said city or town, for the then current year, for state, county and town purposes. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars.

CHAPTER 181, ACTS OF 1904.

AN ACT RELATIVE TO RETURNS TO BE MADE TO THE TAX COMMISSIONER.

Be it enacted, etc., as follows:

Section ninety-three of chapter twelve of the Revised Laws is hereby amended by inserting after the word " purposes ", in the fourteenth line, the words:— They shall also, at the same time, return to the tax commissioner the names of all foreign corporations which have a usual place of business within said city or town, — so as to read as follows:— Section 93. Assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit and established in their respective cities and towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery owned by each of said corporations and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county and town purposes. They shall also, at the same time, return to the tax commissioner the names of all foreign corporations which have a usual place of business within said city or town. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars.

SECTION 11, CHAPTER 271, ACTS OF 1906.

Section ninety-three of chapter twelve of the Revised Laws, as amended by chapter one hundred and eighty-one of the acts of the year nineteen hundred and four, is hereby further amended by striking out the word " August ", in

the second line, and inserting in place thereof the word: — July, — and by striking out the words “ at the same time ”, in the fourteenth and seventeenth lines, respectively, and inserting in place thereof the words: — on or before the first Monday of August, — so as to read as follows: — Section 93. Assessors shall annually, on or before the first Monday of July, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit and established in their respective cities and towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery owned by each of said corporations and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, on or before the first Monday of August, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county and town purposes. They shall also, on or before the first Monday of August, return to the tax commissioner the names of all foreign corporations which have a usual place of business within said city or town. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars.

SECTION 94. If the assessors of a city or town ascertain that the aggregate valuation of such city or town has been diminished since the first day of May of the preceding year, they shall return with the table of aggregates, or with the books, which they are required by sections sixty and sixty-one to deposit in the office of the secretary of the commonwealth, a statement in writing, under oath, of the causes which in their opinion have produced such diminution. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit not more than two hundred dollars.

Assessors to state cause of diminished valuations. 1864, 210, §§ 3, 4, 6. P. S. 11, §§ 88, 89.

SECTION 95. Assessors shall annually, on or before the first day of October, make and forward to the tax commissioner a statement showing the whole amount of exempted property entered upon the valuation lists of their respective

— to make returns to tax commissioner of exempted property, etc. 1874, 227, § 2. 1881, 284, § 4.

P. S. 11, § 90.
1882, 217, § 3.

cities and towns in accordance with section sixty-four, and the amount in each class, and stating separately the aggregate amount belonging to each of the four classes embraced in clause three of section five, a tabular statement of the statistics derived from the returns provided for in section eight, and such lists and statements required by section forty-two relative to real and personal property exempt from taxation under clause three of section five as have been received by them.

Assessors to
make returns
to tax com-
missioner
of assets and
indebtedness
of towns.
1870, 76.
P. S. 11, § 91.
1882, 133, § 2.

SECTION 96. Assessors of each city or town shall annually, on or before the first Monday of August, return to the tax commissioner the aggregate amount of its assets, and the amount of its indebtedness, for which notes, bonds or similar evidences of debt, the payment of which is not provided for by the taxation of the then current year, were outstanding on the first day of May then last preceding, with a concise statement of the various purposes for which such indebtedness was incurred, the amount incurred for each purpose and the amount of each sinking fund established. If in any case in which a sinking fund is required by law no sinking fund has been established, the return shall state whether action has been had under the provisions of section thirteen of chapter twenty-seven and the amount raised and applied thereunder for the year last preceding said first day of May.

— to certify on
request por-
tions of tax
assessed for
state, county
and town
purposes.
1879, 290, § 2.
P. S. 11, § 93.
137 Mass. 273.

SECTION 97. Assessors shall, upon application to any one of them by a person assessed therein, give to him a certificate stating what portion of the whole amount of his tax is assessed as state tax, county tax and town tax, respectively; and in such case the collector shall receive and receipt for either of such taxes separately, or for all together, as may be desired by the tax payer; but the state tax assessed upon poll and property and the county tax so assessed, shall each constitute an entire and indivisible tax.

RESPONSIBILITY AND COMPENSATION OF ASSESSORS.

Liability of
assessors.
1823, 138, § 5.
1833, 166.
R. S. 7, § 44.
G. S. 11, § 51.
1872, 310.
P. S. 11, § 94.
4 Pick. 399.

SECTION 98. Assessors shall not be responsible for the assessment of a tax assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of a city, town or fire district, except for the want of integrity and fidelity on their own part.

5 Pick. 451.
498.
11 Met. 339.

4 Gray. 42.
3 Allen. 410.
4 Allen. 382.

97 Mass. 424.
98 Mass. 469.
99 Mass. 208.

119 Mass. 77.
125 Mass. 553.

SECTION 99. Each assessor shall be paid by his city or town two dollars and fifty cents a day for every whole day in which he is employed in that service, and such additional compensation as the city or town shall allow.

P. S. 11, § 95. 3 Met. 431. 3 Allen, 409. 4 Allen, 382. 129 Mass. 577.

Compensation.
1785, 50, § 2.
1834, 99.
R. S. 7, § 45.
1855, 224.
G. S. 11, § 52.
1873, 156.

APPORTIONMENT OF STATE TAX.

SECTION 100. The tax commissioner shall, before the first day of January in the year nineteen hundred and four and before the first day of January in every third year thereafter, prepare and report in print to the general court, within the first week of its then next succeeding session, an equalization and apportionment upon the several cities and towns, of the number of polls, the amount of property, and the proportion of every one thousand dollars of state or county tax, including polls at one-tenth of a mill each, which should be assessed upon each city and town.

Apportionment of state tax by tax commissioner.
1881, 163, § 1.
P. S. 11, § 96.

SECTION 101. Said commissioner shall from time to time be supplied by the secretary of the commonwealth with the returns of assessors required by sections sixty and sixty-one. He shall cause abstracts to be prepared, showing the value above real estate and machinery locally taxed, of shares in corporations organized in this commonwealth, and national banks, held by residents of each city and town and not included in the local assessment. He may require from state, city and town officers such further returns and statements relative to the amount and value of taxable property in the several cities and towns as in his judgment may be necessary. He shall to the best of his judgment and discretion prepare said equalization and apportionment upon the basis of the returns and statements herein provided for and authorized.

Tax commissioner to be supplied with returns of assessors. To prepare abstracts, etc.
1881, 163, §§ 1, 2.
P. S. 11, § 97.

Basis of apportionment.

The following statutes, relative to the office of Tax Commissioner and supervisors of assessors, are inserted for the information of assessors:—

CHAPTER 433, ACTS OF 1908.

AN ACT RELATIVE TO THE POWERS OF THE TAX COMMISSIONER.

Be it enacted, etc., as follows:

SECTION 1. Section five of chapter fourteen of the Revised Laws is hereby amended by striking out the words

"or his deputy", in the first, fifth and eighth lines, by striking out the words "and his deputy", in the tenth line, by striking out the word "their", in the tenth line, and inserting in place thereof the word: — his, — and by adding at the end thereof the following: — He shall give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment and collection of taxes, and may advise and consult with the attorney-general upon all questions arising under this provision, — so as to read as follows: — *Section 5.* He may visit any city or town, inspect the work of its assessors and give to them such information and require of them such action as will tend to produce uniformity in valuation and assessments throughout the commonwealth. He may cause an assessor who violates any of the laws relative to the assessment of taxes for which a penalty is imposed to be prosecuted, either in the county in which said officer resides or in an adjoining county. He may appear before the superior court or any board of county commissioners sitting for the abatement of taxes. He shall be allowed his reasonable travelling expenses incurred under the provisions of this section. He shall give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment and collection of taxes, and may advise and consult with the attorney-general upon all questions arising under this provision.

SECTION 2. The duties imposed upon and the powers granted to the tax commissioner by the provisions of this act may be exercised by him in person or by his deputy or first assistant acting under his direction and control.

CHAPTER 550, ACTS OF 1908.

AN ACT TO PROVIDE FOR THE MORE EFFECTIVE ADMINISTRATION OF THE LAWS RELATING TO TAXATION.

Be it enacted, etc., as follows:

SECTION 1. The tax commissioner may, with the advice and consent of the governor and council, appoint, and with their consent remove, three supervisors of assessors, who, under the direction and control of the tax commissioner, shall have such supervision over the boards of assessors and collectors of taxes of the several cities and towns of the commonwealth as is authorized by law. Each super-

visor of assessors shall receive a salary of two thousand dollars per annum, and shall be allowed his travelling and other necessary expenses.

SECTION 2. The supervisors of assessors shall perform, subject to the control, approval and direction of the tax commissioner, all the duties imposed upon said tax commissioner by section five of chapter fourteen of the Revised Laws, and such additional duties as may be specified in this act, and shall have and exercise under the control of the tax commissioner all the powers and authority as to the taxation of property and the collection of taxes which are conferred upon him by law.

SECTION 3. Whenever it shall appear to the tax commissioner that the property or any part thereof in any city or town is not valued for the purposes of taxation in accordance with the provisions of law, and that such failure to comply with the law is the result of inadequate methods in keeping the records of valuation or ownership of property, or is due to a failure upon the part of the assessors or any of them of such city or town properly to examine the records of the registry of deeds and probate court, or to make use of the information required by law to be furnished to boards of assessors by the tax commissioner, he shall forthwith direct the assessors of such city or town to adopt such methods of keeping their records or to make such examination of the records of the registry of deeds and probate court, or to make such use of the information that he, in accordance with law, has furnished to them, as he may deem necessary. Upon failure on the part of any assessor or assessors in any city or town to comply with the directions of the tax commissioner as herein provided, the tax commissioner shall forthwith notify the mayor of the city or the selectmen of the town of such failure in the performance of duty on the part of said assessor or assessors, together with any recommendations that he may deem necessary or expedient in the matter.

SECTION 4. The supervisors of assessors shall, under the direction of the tax commissioner, on or before the first day of May in each year, furnish to each board of assessors of the cities and towns of the commonwealth all the information relating to the assessment, valuation and ownership of property of any inhabitant of said city or town that has come into the possession of the tax commissioner's depart-

ment, particularly under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven. They shall give to said boards of assessors such further instruction and supervision as to their respective duties as may be necessary to secure uniform assessment and just taxation, and to equalize the valuation of property for purposes of state, county and local taxation.

SECTION 5. If in the opinion of the tax commissioner any property in the commonwealth is not properly valued for the purposes of taxation, he shall have authority to recommend to local boards of assessors a revision of the same. If such recommendation is accepted and adopted by the local boards the new assessment shall thereupon be operative. Any person aggrieved by such revision may appeal to the superior court for the county in which the property is situated.

The following provisions of statute relative to certain duties of assessors not defined in chapter 12 of the Revised Laws are here inserted: —

CHAPTER 521, ACTS OF 1905.

AN ACT RELATIVE TO THE SUPPRESSION OF THE GYPSY AND BROWN TAIL MOTHS.

Be it enacted, etc., as follows:

SECTION 1. . . . *Section 4.* Cities and towns by such public officer or board as they shall designate or appoint, shall, under the advice and general direction of said superintendent, destroy the eggs, caterpillars, pupæ and nests of the gypsy and brown tail moths within their limits, except in parks and other property under the control of the commonwealth, and except in private property, save as otherwise provided herein. When any city or town shall have expended within its limits city or town funds to an amount in excess of five thousand dollars in any one fiscal year, in suppressing gypsy or brown tail moths, the commonwealth shall reimburse such city or town to the extent of fifty per cent of such excess above said five thousand dollars.

Cities or towns, where one twenty-fifth of one per cent of the assessed valuation of real and personal property is less than five thousand dollars, and where the assessed valu-

ation of real and personal property is greater than six million dollars, shall be reimbursed by the commonwealth to the extent of eighty per cent of the amount expended by such cities or towns of city or town funds in suppressing the gypsy and brown tail moths in any one fiscal year, in excess of said one twenty-fifth of one per cent.

In the case of towns where the assessed valuation of real and personal property is less than six million dollars, after they have expended in any one fiscal year town funds to an amount equal to one twenty-fifth of one per cent of their assessed valuation of real and personal property, the commonwealth shall expend within the limits of such towns, for the purpose of suppressing the gypsy and brown tail moths, such an amount in addition as the superintendent with the advice and consent of the governor shall recommend. The commonwealth shall reimburse cities and towns every sixty days according to the provisions of this act.

No city or town shall be entitled to any reimbursement from the commonwealth until it has submitted to the auditor of the commonwealth itemized accounts and vouchers showing the definite amount expended by it for the purpose of this act; nor shall any money be paid out of the treasury of the commonwealth to cities or towns, pursuant to the provisions of this act, until said vouchers and accounts have been approved by the superintendent and the auditor of the commonwealth.

For the purposes of this section, the valuation of the previous year shall be taken as a basis. The fiscal year for nineteen hundred and seven and for all succeeding years shall close on the thirtieth day of November.

SECTION 5. When, in the opinion of the superintendent, any city or town is not expending a sufficient amount for the abatement of said nuisance, or is not conducting the necessary work in a proper manner, then the superintendent shall, with the advice and consent of the governor, order such city or town to expend such an amount as the superintendent shall deem necessary, and in accordance with such methods as the superintendent, with the consent of the governor, shall prescribe: *provided*, that no city or town where the assessed valuation of real and personal property exceeds six million dollars shall be required to expend, exclusive of any reimbursement received from the common-

wealth, during any one full year more than one fifteenth of one per cent of such valuation, and that no town where the assessed valuation of real and personal property is less than six million dollars shall be required to expend, exclusive of any reimbursement received from the commonwealth, during any one full year more than one twenty-fifth of one per cent of such valuation. For the purposes of this section the valuation of each previous year shall be used.

Any city or town failing to comply with the directions of the said superintendent in the performance of said work within the date specified by him shall pay a fine of one hundred dollars a day for failure so to do; said fine to be collected by information brought by the attorney-general in the supreme judicial court for Suffolk county.

In case of emergency, or where there is great or immediate danger of the increase or spread of the moths due to the neglect of any city or town to comply with the terms of this act, the superintendent, with the consent of the governor, may initiate or continue the work of suppressing the moths within the limits of such city or town for such a period as the superintendent may deem necessary. The cost of such work, including that done on private estates, less any sum due from the state by way of reimbursements on account of said work, shall be certified by the superintendent to the treasurer of the commonwealth, and be collected by him as an additional state tax upon the city or town so failing to comply with the requirements of the law. The superintendent may also in case of emergency, subject to the approval of the governor, carry on wholly or in part such operations as may be necessary to check the spreading of the gypsy or brown tail moth in parks not under the control of the commonwealth, and in cemeteries, woodlands and other places of public resort. The amount to be so expended in any one year shall not exceed ten per cent of the appropriations made for the year by the state for the purpose of suppressing said moths.

SECTION 6. The mayor of every city and the selectmen of every town shall, on or before the first day of November in each year, and at such other times as he or they shall see fit, or as the state superintendent may order, cause a notice to be sent to the owner or owners, so far as can be ascertained, of every parcel of land therein which is in-

fested with said moths; or, if such notification appears to be impracticable, then by posting such notice on said parcels of land, requiring that the eggs, pupæ and nests of said moths shall be destroyed within a time specified in the notice.

When, in the opinion of the mayor or selectmen, the cost of destroying such eggs, pupæ and nests on lands contiguous and held under one ownership in a city or town shall exceed one half of one per cent of the assessed value of said lands, then a part of said premises on which said eggs, pupæ or nests shall be destroyed may be designated in such notice, and such requirement shall not apply to the remainder of said premises. The mayor or selectmen may designate the manner in which such work shall be done, but all work done under this section shall be subject to the approval of the state superintendent.

If the owner or owners shall fail to destroy such eggs, pupæ or nests in accordance with the requirements of the said notice, then the city or town, acting by the public officer or board of such city or town designated or appointed as aforesaid, shall, subject to the approval of the said superintendent, destroy the same, and the amount actually expended thereon, not exceeding one half of one per cent of the assessed valuation of said lands, as heretofore specified in this section, shall be assessed upon the said lands; and such an amount in addition as shall be required shall be apportioned between the city or town and the commonwealth in accordance with the provisions of section four of this act. The amounts to be assessed upon private estates as herein provided shall be assessed and collected, and shall be a lien on said estates, in the same manner and with the same effect as is provided in the case of assessments for street watering.

SECTION 7. If, in the opinion of the assessors of a city or town, any land therein has received, by reason of the abatement of said nuisances thereon by said superintendent or by said city or town, a special benefit beyond the general advantage to all land in the city or town, then the said assessors shall determine the value of such special benefit and shall assess the amount thereof upon said land: *provided*, that no such assessment on lands contiguous and held under one ownership shall exceed one half of one per cent of the assessed valuation of said lands; and *provided*, that

the owner or owners shall have deducted from such assessment the amount paid and expended by them during the twelve months last preceding the date of such assessment toward abating the said nuisances on said lands, if, in the opinion of the assessors, such amount has been expended in good faith. Such assessment shall be a lien upon the land for three years from the first day of January next after the assessment has been made, and shall be collected under a warrant of the assessors to the collector of taxes of such city or town, in the manner and upon the terms and conditions and in the exercise of the powers and duties, so far as they may be applicable, prescribed by chapter thirteen of the Revised Laws relative to the collection of taxes.

Real estate sold hereunder may be redeemed within the time, in the manner, and under the provisions of law, so far as they may be applicable, set forth in chapter thirteen of the Revised Laws for the redemption of land sold for taxes.

A person aggrieved by such assessment may appeal to the superior court for the county in which the land lies, by entering a complaint in said court within thirty days after he has had actual notice of the assessment, which complaint shall be determined as other causes by the court without a jury. The complaint shall be heard at the first sitting of said court for trials without a jury after its entry; but the court may allow further time, or may advance the case for speedy trial, or may appoint an auditor as in other cases. The court may revise the assessment, may allow the recovery back of an amount wrongfully assessed which has been paid, may set aside, in a suit begun within three years from the date thereof, a collector's sale made under an erroneous assessment, may award costs to either party and may render such judgment as justice and equity require.

If, in the opinion of the assessors, the owner of an estate upon which an assessment as aforesaid has been made is, by reason of age, infirmity or poverty unable to pay the assessment, they may upon application abate the same. Every city or town in rendering an account to the state auditor as provided for in section four of this act shall deduct from such amount as it has expended the total amount it has assessed for work performed under section

six of this act during the term covered by the account: *provided*, such work was performed under such conditions as require reimbursement in whole or in part by the state.

SECTION 12. Valuations of real and personal property of each previous year shall govern the provisions of this act.

The following decisions of the Attorney-General, bearing upon the meaning of the word "lands" in section 6 of the foregoing chapter, are inserted here for the information and guidance of assessors:—

Lands owned by one owner on two sides of a public highway are contiguous within the meaning of St. 1905, c. 381, § 6, providing that when, in the opinion of the mayor, or selectmen, the cost of destroying eggs, pupæ and nests of gypsy or brown-tail moths "on lands contiguous and held under one ownership in a city or town" will exceed one-half of one per cent of the assessed value of such lands, a part of such lands only may be designated for such purpose. — OPINIONS OF THE ATTORNEY-GENERAL, Vol. 2, p. 594.

The word "lands," as used in St. 1905, c. 381, § 6, providing that where the owner or owners of real estate fail to destroy the eggs, pupæ or nests of the gypsy or brown-tail moths, the city or town within which such real estate is situated "shall, subject to the approval of said superintendent, destroy the same, and the amount actually expended thereon, not exceeding one half of one per cent of the assessed valuation of said lands, . . . shall be assessed upon said lands," includes any buildings which may have been erected thereon. — OPINIONS OF THE ATTORNEY-GENERAL, 1906, p. 30.

CHAPTER 465, ACTS OF 1905.

Enrolment of Persons Subject to Military Duty.

SECTION 8. Assessors shall annually, in May or June, make a list of persons living within their respective limits liable to enrolment, and shall place a certified copy thereof in the hands of the clerks of their respective cities and towns, who shall place it on file with the records of such city or town, and annually, in May, June or July, transmit returns of the militia thus enrolled to the adjutant general.

SECTION 9. Keepers of taverns or boarding houses, and masters and mistresses of dwelling houses, shall, upon ap-

plication of the assessors, or of persons acting under them, give information of the persons residing in their houses, liable to enrolment or to military duty, and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress or person refuses to give such information, or gives false information, such keeper, master or mistress shall forfeit twenty dollars, and such person shall forfeit twelve dollars, to be recovered on complaint of any of the assessors.

The statutes relating to the taxation of the corporate franchise of steam railroad companies will be found in chapter 463, Acts of 1906, part II., sections 211-217.

The statutes relating to the taxation of the corporate franchise of street railway companies will be found in chapter 463, Acts of 1906, part III., sections 125-132.

CHAPTER 463, ACTS OF 1906, PART III., SECTIONS 133-136.

D. Commutation Tax.

SECTION 133. A street railway company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall annually, on or before the fifteenth day of October, make and file in the office of the board of assessors of every city and town in which any part of the railway operated by it is situated a return signed and sworn to by its president and treasurer, stating the length of track operated by it in public ways and places in such city or town, and also the total length of track operated by it in public ways and places, determined as provided in section one hundred and twenty-five, and also the amount of its gross receipts during the year ending on the preceding thirtieth day of September, including therein all amounts received by it from the operation of its railway, but excluding income derived from sale of power, rental of tracks or other sources.

SECTION 134. On or before the first day of November annually, the assessors of every city and town in which a street railway is operated, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall assess on

each company described in the preceding section operating a railway therein an excise tax of an amount equal to such proportion of the following percentages of the gross receipts of such company as the length of tracks operated by it in public ways and places of such city or town bears to the total length of tracks operated by it in public ways and places.

The percentages shall be based upon the annual gross receipts for each mile of track as follows and computed upon the aggregate of said annual gross receipts: four thousand dollars or less, one per cent; more than four thousand dollars and less than seven thousand, two per cent; more than seven thousand dollars and less than fourteen thousand, two and one quarter per cent; more than fourteen thousand dollars and less than twenty-one thousand, two and one half per cent; more than twenty-one thousand dollars and less than twenty-eight thousand, two and three quarters per cent; twenty-eight thousand dollars or more, three per cent.

The excise tax provided by this section shall be in addition to the taxes otherwise provided by law.

SECTION 135. The aldermen of a city, the selectmen of a town or a street railway company operating in such city or town may petition the board of railroad commissioners for a revision of the amount of the excise tax to be paid by a company under the provisions of the preceding section. Said board shall, upon such petition, after public notice and a hearing at which said aldermen or selectmen and said company may submit evidence, determine the average annual cost to said city or town of the work done by it during the preceding three years under the provisions of this act which it was not by law required to do prior to the first day of October in the year eighteen hundred and ninety-eight, and also the average annual payments made by said company to said city or town under and pursuant to the provisions of the preceding section during said three years; and having determined said average annual cost and average annual payments, said board shall fix and determine the proportion of a percentage of the gross receipts which shall be paid as an excise tax under the provisions of said section by the company to said city or town annually thereafter, said percentage to be fixed at such a rate as will be necessary to yield to said city or town

annually thereafter an amount equal to the average annual cost to said city or town determined as aforesaid; and the percentage so fixed shall not be again changed for the period of three years and only in the manner herein provided. Said board may at any time upon petition therefor by a city or town entitled to a part of the excise tax paid by a street railway company, after such notice as the board may order to all other cities and towns entitled to share in the excise tax paid by said company, and after a hearing, determine as to the distribution thereof among the several cities and towns in which such company operated any part of its railway, and fix the proportions thereof to which they shall respectively be entitled, which shall thereafter be the proportions of said excise tax to be assessed upon said company, instead of the proportion based upon length of tracks as hereinbefore provided.

SECTION 136. Prior to the fifteenth day of November in each year, the assessors of every city and town shall notify the collector of taxes thereof of the amount of excise tax assessed therein under the provisions of section one hundred and thirty-four, and the collector shall forthwith notify the treasurer of every street railway company of the amount of excise tax so assessed upon it, which shall become due and payable within thirty days after the receipt of such notice. The provisions of chapter thirteen of the Revised Laws, so far as appropriate, shall apply to the collection of such excise tax.

E. Application of Taxes.

SECTION 137. All taxes which are collected from a street railway company and paid to a city or town under the provisions of the preceding section, of section one hundred and thirty-two, and of section twenty-eight of chapter five hundred and seventy-eight of the acts of the year eighteen hundred and ninety-eight shall be applied toward the repair and maintenance of the portions of the public ways and places in which the tracks of such company are located, and to the removal of snow from such public ways and places within such city or town.

CHAPTER 318, ACTS OF 1907.

AN ACT RELATIVE TO THE REMOVAL OF SNOW BY STREET
RAILWAY COMPANIES AND TO THE APPLICATION OF TAXES
RECEIVED FROM SUCH COMPANIES.*Be it enacted, etc., as follows:*

SECTION 1. Section one hundred and thirty-seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out all after the word "maintenance", in the seventh line, and inserting in place thereof the words:—of the public ways and removal of snow therefrom within such city or town,—so as to read as follows:—*Section 137.* All taxes which are collected from a street railway company and paid to a city or town under the provisions of the preceding section, of section one hundred and thirty-two, and of section twenty-eight of chapter five hundred and seventy-eight of the acts of the year eighteen hundred and ninety-eight, shall be applied toward the repair and maintenance of the public ways and the removal of snow therefrom within such city or town.

REVISED LAWS, CHAPTER 13.

OF THE COLLECTION OF TAXES.

- SECTION 1. — Definitions.
 SECTIONS 2-19. — Duties of Collectors.
 SECTIONS 20-25. — Collection by Distress.
 SECTIONS 26-31. — Collection by Imprisonment.
 SECTIONS 32-34. — Collection by Suit.
 SECTIONS 35-57. — Collection by Sale or Taking of Land.
 SECTIONS 58-69. — Redemption.
 SECTIONS 70-72. — Proceedings if Tax Title is Held Invalid.
 SECTIONS 73, 74. — Lien of Co-Tenants.
 SECTIONS 75-87. — Miscellaneous Provisions.

DEFINITIONS.

SECTION 1. Terms used in this chapter shall, unless other meaning is clearly apparent from the context, or unless they are inconsistent with the manifest intent of the legislature, be construed as follows:

"Collector" shall mean a person receiving a tax list and a warrant to collect the same.

Definitions.
 1785, 70, § 7.
 R. S. 8, § 24.
 G. S. 12, § 28.
 1879, 69.
 P. S. 12, § 30.
 1888, 390, § 35.
 1892, 168.
 1899, 425,
 §§ 1, 2.

1900, 290.
1901, 108, 150.

"Publication" as applied to any notice, advertisement or other instrument, the publication of which is required by law, shall mean the act of printing it for three successive weeks in a newspaper published in the city or town, if any, otherwise in the county, where the land or other property to which the notice or other instrument relates is situated. The last publication shall be made at least one week prior to the date stated for the occurrence of the event to which the publication relates.

"Registry of deeds" shall mean the registry of deeds for the county or district in which the land taxed lies.

"Service" as applied to any notice, summons, demand or other paper shall mean delivering it or a copy to the person for whom it is intended, or leaving it or a copy at his last and usual place of abode or of business, or sending it or a copy by mail postpaid addressed to him at his last and usual place of abode or of business or, if such notice, summons, demand or other paper relates to taxes upon land, posting it or a copy conspicuously in some convenient and public place in his precinct and sending a copy by mail postpaid addressed to him at the city or town in which such land lies. Such service shall be sufficient whether made by the collector of taxes holding office or by any predecessor.

The affidavit of the collector or deputy collector serving the notice, summons, demand or other paper of the manner of service shall be kept on file in the office of the collector, and shall be prima facie evidence that the same was so served.

DUTIES OF COLLECTORS.

Collection and
payment over
of taxes.
Return
thereof.
R. S. 7, § 34;
S. § 1, 33.
G. S. 12, § 1.
P. S. 12, § 1.
1887, 110, § 4.
1888, 390,
§§ 1, 6.
1897, 126, § 1.
126 Mass. 476.
127 Mass. 405.

SECTION 2. Every collector of taxes, constable, sheriff or deputy sheriff, receiving a tax list and warrant from the assessors, shall collect the taxes therein set forth, and pay over the same to the city or town treasurer according to the warrant, and shall make written return thereof with his tax list and of his doings thereon at such times as the assessors shall in writing require. In towns he shall, on or before the fifth day of each month, pay over to the town treasurer all money received by him during the preceding month on account of taxes.

Notice of tax
to tax payer.
1877, 235, § 1.

SECTION 3. The collector shall forthwith, after receiving a tax list and warrant, send notice to each person who

is assessed, resident or non-resident, of the amount of his tax. If such notice is sent by mail, it shall be postpaid and shall be directed to the city or town in which the assessed person resided on the first day of May of the year in which the tax was assessed, and, if he resides in a city, it shall, if possible, be directed to the street and number of his residence. If he is assessed for a poll tax only, the notice shall be sent on or before the second day of September of the year in which the tax is assessed. An omission to send such notice shall not affect either the validity of a tax or of the proceedings for collecting it.

SECTION 4. He shall make and keep in the book containing the tax list committed to him by the assessors, against the name of every person assessed for a tax, entries showing the disposition thereof, whether reassessed, abated or paid, and the date of such disposition.

SECTION 5. He shall also keep a cash book, in which he shall enter all sums of money paid to him, as they are received, specifying the total amount of tax, abatements allowed, discount allowed, all interest charged, the total amount received and the date of receipt. He shall also enter therein the date and amount of every payment and disbursement made by him, and to whom paid, with such other matters as the city or town may require.

SECTION 6. All books kept by the collector shall be furnished by, and be the property of, the city or town, and shall at all reasonable times be open to examination by the auditor of such city or town or by any other agent thereof duly authorized for that purpose. The collector shall, upon demand by the selectmen, exhibit to them or to any persons whom they may designate at any time during ordinary business hours, the books, accounts and vouchers relating to taxes committed to him for collection and to his receipts and payments on account of taxes; and they, or the persons designated by them, shall have full opportunity to examine said books, accounts and vouchers, and to make copies and extracts therefrom.

SECTION 7. A collector shall, within three months after his resignation of, or retirement or removal from, the office of collector, deposit with the clerk of the city or town in which he held such office all his accounts, records and papers, except his warrant, which relate to the assessment and collection of taxes in such city or town, and,

P. S. 12, § 2.
1888, 390, § 2.
1889, 334, § 1.

Collector to keep books of account.
1887, 110, § 2.
1888, 390, § 3.
1889, 334, § 2.

— to keep cash book.
1887, 110, § 1.
1888, 390, § 4.

Account books, how provided. To be open to inspection.
1887, 110, § 3.
1888, 390, § 5.
1897, 126, § 2.

Deposit of accounts, etc., by retiring, etc., collector with city or town clerk.
1892, 370, §§ 1, 4.

when all the taxes which have been committed to him have been collected or abated, or, in any event, at the end of three years from the date of their commitment to him, he shall so deposit all such accounts, records and papers and his warrant.

Deposit of
accounts, etc.,
by executor,
etc., of de-
ceased col-
lector.

1785, 46, § 5.
1791, 22, § 1.
R. S. 8, § 41.
G. S. 12, § 54.
F. S. 12, § 82.
1888, 390, § 92.
1892, 370, § 3.

SECTION 8. The executor or administrator of a person who was or had been a collector shall, within three months after his appointment, deposit all the accounts, records, papers or unsettled tax lists which come into his possession, relating to the assessment and collection of taxes, with the clerk of the city or town to which they pertain; and any other person into whose possession, upon the death, resignation, retirement or removal of a collector from office such accounts, records, papers or unsettled tax lists may come, shall forthwith deposit them with the clerk of such city or town.

— in collect-
or's office.
1892, 370, § 5.

SECTION 9. If the collector has an office for the deposit of records and the transaction of his official business, the accounts, records and papers otherwise required to be deposited with the city or town clerk shall be deposited in said office.

Demand for
tax books and
accounts, by
whom made.
1892, 370, § 6.

SECTION 10. A city or town clerk, or collector, who shall have knowledge of any accounts, records or papers relating to taxes in his city or town which should be in his custody, shall demand them of any person having them.

Penalty for
unlawful de-
tention of tax
accounts.
1892, 370, § 7.

SECTION 11. A collector, former collector or an executor or administrator of a deceased collector who refuses or neglects to perform any duties required by the four preceding sections, or any person having in his possession any such accounts, records or papers, who, after demand made by the clerk or collector entitled by law to the custody thereof, wrongfully detains them, shall forfeit not more than five hundred dollars.

— for failure of
collector to
pay over taxes
or to exhibit
accounts.
1897, 126, § 3.

SECTION 12. Every collector who fails monthly to pay over to the town treasurer the taxes collected by him, as required by section two, or who neglects or refuses to exhibit his books, accounts and vouchers to the selectmen when required by them, under the provisions of section six, shall be punished by a fine of not more than three hundred dollars.

Completion of
taxes by col-
lector after

SECTION 13. The collector shall, unless removed from office or unless his tax list has been transferred to his suc-

cessor, complete the collection of the taxes committed to him, notwithstanding the expiration of his term of office. He shall be allowed the following charges and fees and no other, which after they have accrued, shall be severally added to the amount of the tax:

For an arrest, one dollar; [and travel. See below, Acts of 1907, chapter 427.]

For a summons, twenty cents;

For a warrant to distrain or arrest, fifty cents;

For a copy of warrant and certificate under section twenty-three, one dollar;

For preparing advertisement of sale, fifty cents;

For advertisement of sale in newspapers, the cost thereof;

For posting notices of sale, fifty cents for each parcel of real estate seized or lot of goods distrained;

For distraining goods, one dollar and the cost thereof;

For selling goods distrained, the cost thereof;

For obtaining affidavit of disinterested person, one dollar;

For recording affidavit, the register's fees;

For preparing deed, two dollars;

For each hour's time actually expended in selling as certified by him under the provisions of section forty-nine, thirty cents;

For service of demand and notice under the provisions of section fifty-three, if served in the manner required by law for the service of subpoenas upon witnesses in civil cases, fifty cents and travel as allowed by chapter two hundred and four.

expiration
of term.
1785, 70, § 8.
R. S. 8, § 2.
G. S. 12, § 2.
1862, 183, § 10.
1878, 266, § 13.
1881, 138, § 2.
P. S. 12, §§ 3,
36, 47.
1888, 390, §§ 7,
29, 41, 55.
1889, 334, § 3.
1890, 331, § 2.
1894, 537, § 5.
102 Mass. 75.
119 Mass. 124.

CHAPTER 427, ACTS OF 1907.

AN ACT TO PROVIDE FOR THE ALLOWANCE OF THE ACTUAL TRAVELLING EXPENSES OF COLLECTORS OF TAXES IN CASES OF ARREST.

Be it enacted, etc., as follows:

SECTION 1. In addition to the fee of one dollar which by section thirteen of chapter thirteen of the Revised Laws a collector of taxes is allowed for an arrest, he shall be allowed his actual travelling expenses incurred in making such arrest.

Demand for
tax to be made.
1785, 70, § 2.
R. S. 8, § 3.
G. S. 12, § 3.
P. S. 12, § 4.
1888, 390, § 8.
1889, 334, § 4.
1 Met. 328.

SECTION 14. The collector shall, before selling the land of a resident, or distraining the goods of any person, or arresting him for his tax, serve on him a statement of the amount thereof with a demand for its payment. If the heirs of a deceased person, co-partners or two or more persons are jointly assessed, service need be made on only one of them. Such demand for the tax upon land may be made upon the person occupying the same upon the first day of May of the year in which the tax is assessed. If a mortgagee has given notice under the provisions of section thirty-six, such demand shall be served upon the mortgagee instead of the owner or occupant. No demand need be made on a non-resident owner of land, nor, except as herein provided, on a mortgagee.

Summons to
proceed
demand, when.
1888, 390, § 28.
1889, 334, § 8.
1890, 331, § 1.

SECTION 15. The collector may, before making a demand for the payment of a tax which is due from any person, serve a summons on him, stating therein the amount due and that unless the same, with twenty cents more for the summons, is paid within ten days, he will proceed to collect it according to law.

Collection
from persons
of doubtful
credit.
1785, 70, § 2.
1815, 130, § 3.
R. S. 8, § 12.
G. S. 12, § 4.
1874, 238.
P. S. 12, § 5.
1888, 390, § 9.

SECTION 16. If the assessors are of opinion that the credit of a person taxed is doubtful or that he is about to leave the commonwealth, they may, by a special warrant, direct the collector forthwith, without demand or notice, to compel payment by distress or imprisonment, whether the tax is payable immediately or at a future day, by instalments or otherwise.

Person claim-
ing abatement
to exhibit cer-
tificate
thereof.
R. S. 8, § 4.
G. S. 12, § 5.
P. S. 12, § 6.
1888, 390, § 10.
9 Met. 503.

SECTION 17. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes the certificate of such abatement authorized by the provisions of section eighty-three of chapter twelve; and he shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

Collection if
erroneous
name in war-
rant.
R. S. 8, § 5.
G. S. 12, § 6.
P. S. 12, § 7.
1888, 390, § 11.
6 Met. 474.

SECTION 18. If, in the assessors' lists or in their warrant and list committed to the collector, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be assessed, if he is taxable and can be identified by the assessors.

7 Gray, 127. 12 Cush. 56. 97 Mass. 323. 127 Mass. 502.

Part payment
of tax.
1899, 394, §§ 1,
2, 4.

SECTION 19. After the delivery of a tax, including assessments for betterments or other purposes but not including a poll tax, to a collector for collection, the owner of the estate or person assessed or a person in behalf of

said owner or person may tender to the collector not less than twenty-five per cent of the tax which shall be received, receipted for and applied toward the payment of the tax. If in any court it shall be determined that the tax is more than the amount so paid, judgment shall be entered for such excess and interest upon the amount thereof to the date of the judgment, and on the amount paid to the date of the payment, with costs if otherwise recoverable. The part payment authorized by this section shall not affect a right of tender, lien or other provision of law for the recovery of the amount of such tax, or interest or costs thereon, remaining due, but if the part payment is more than the tax, as finally determined, the excess, without interest, shall be repaid to the person who paid it.

CHAPTER 349, ACTS OF 1902.

AN ACT RELATIVE TO TAXES ASSESSED UPON FOREIGN CORPORATIONS AND NON-RESIDENT PERSONS DOING BUSINESS IN THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. When any foreign corporation or non-resident person doing business in the commonwealth shall for sixty days neglect, refuse or omit to pay a tax lawfully assessed and payable, any court having jurisdiction in equity may upon petition of the collector of taxes of the city or town where the tax is assessed restrain said corporation or person from doing business in the commonwealth until said tax, with all incidental costs and charges, shall have been paid. Service of process upon any such petition may be made by an officer duly qualified to serve process, by leaving a duly attested copy thereof at the place where the business is carried on.

CHAPTER 378, ACTS OF 1907.

AN ACT TO PROVIDE FOR THE AUTHORITATIVE ASCERTAINMENT OF MUNICIPAL LIENS ON REAL ESTATE.

Be it enacted, etc., as follows:

SECTION 1. The collector of taxes for any city shall, on application in writing by any person, and within two days thereafter, furnish to any such applicant a statement in writing of all taxes and other assessments which at the

time constitute liens on the parcel of real estate specified in such application and are payable on account of such real estate. Such statement shall be itemized and shall show the amount or amounts then payable to the city on account of all such taxes and assessments so far as such amounts are fixed and ascertained, and if the same are not then ascertainable, it shall so be expressed in the statement. Any officer or board of any city doing any act towards establishing any such tax, assessment, lien or charge upon any real estate in such city shall transmit a notice of such act to the collector of taxes of such city.

SECTION 2. City collectors shall charge one dollar for each statement issued under the provisions of this act, and the money so received shall be paid into the city treasury.

Distress and
sale for taxes.
Exemptions.
1785, 50, § 6.
R. S. 8, § 7.
1846, 195, § 1.
G. S. 12, § 7.
P. S. 12, § 8.
1888, 390, § 12.
9 Met. 504.
7 Gray, 133.
121 Mass. 351.
126 Mass. 101.

SECTION 20. If a person refuses or neglects to pay his tax for fourteen days after demand, the collector shall without unnecessary delay levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth or under the laws of the United States and located or having a general office in this commonwealth; but excluding the tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land, military arms, utensils for housekeeping necessary for upholding life, and bedding and apparel necessary for himself and family.

Detention,
notice, sale.
1785, 50, § 6;
70, § 2.
1791, 22, § 3.
R. S. 8, § 8.
G. S. 12, § 8.
P. S. 12, § 9.
1888, 390, § 13.
1 Met. 328.
13 Met. 85.
113 Mass. 40.

SECTION 21. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction for payment of the tax and charges of keeping and sale, first posting notice of the sale in some public place in the city or town at least forty-eight hours prior thereto. 126 Mass. 101. 127 Mass. 502.

Adjournment
of sale.
R. S. 8, § 9.
G. S. 12, § 9.
P. S. 12, § 10.
1888, 390, § 14.

SECTION 22. The collector may once adjourn such sale for not more than three days, and he shall forthwith post a notice of such adjournment at the place of sale.

Seizure and
sale of shares.
1846, 195, §§ 2.
34.
G. S. 12, §§ 10.
11.
P. S. 12, §§ 11.
12.

SECTION 23. The seizure of a share of stock or other interest in a corporation may be made by leaving with its clerk, treasurer or cashier, if there is such officer, otherwise with any officer or person who has at the time the

custody of its books and papers, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, stating the tax which the stockholder is liable to pay, and that because of his refusal or neglect to pay, the collector has seized such share or interest. The sale thereof shall be made in the manner above prescribed for the sale of goods by collectors, and shall also be subject to the provisions of sections forty-nine and fifty of chapter one hundred and seventy-seven.

SECTION 24. If a person is taxed for land in his occupation, but of which he is not the owner, the collector, after demand for payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine or other stock or produce of such estate, belonging to the owner thereof, which, within nine months after such assessment has been committed to him, may be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand for payment need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

SECTION 25. The collector shall upon demand give an account in writing of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale.

1888, 390, § 17.

5 Gray, 530.

126 Mass. 101.

Recovery of taxes assessed to person not owner of land taxed to him.
1888, 390, § 14.
R. S. 8, § 16, 17.
G. S. 12, § 21.
P. S. 12, § 23.
1888, 390, § 27.

Surplus proceeds to owner.
1888, 390, § 2.
R. S. 8, § 10.
G. S. 12, § 12.
P. S. 12, § 13.

COLLECTION BY IMPRISONMENT.

SECTION 26. If a person refuses or neglects to pay his tax for fourteen days after demand and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to jail until he pays the tax and charges of commitment and imprisonment, or is discharged according to law; but a person committed for the non-payment of a poll tax shall not be detained in jail more than seven days.

SECTION 27. A collector who commits a person to jail shall give to the keeper thereof a certificate signed by him, stating that he has committed the person for non-payment of his tax for fourteen days after demand therefor, and for want of goods and chattels whereof to make distress, and

Imprisonment for non-payment of tax.
1888, 390, § 13.
1893, 241.
1901, 408.
13 Met. 85.
9 Gray, 190.
13 Gray, 93.
3 Allen, 5.

Certificate of cause of commitment.
1888, 390, § 11.
R. S. 8, § 13.
G. S. 12, § 14.
P. S. 12, § 15.
1888, 390, § 19.
1889, 334, § 5.

setting forth the amount said person shall pay for said tax, interest, charges and fees.

Discharge of
debtor upon
poor debtor
oath.
1790, 42,
§§ 1-4.
R. S. 8, §§ 48,
49.
1857, 141, § 24.
G. S. 12, § 15.
P. S. 12, § 16.
1888, 390, § 20.

SECTION 28. Upon the request of a person who has been committed to jail for the non-payment of a tax, the jailer shall forthwith inform some magistrate having authority to examine poor debtors that the debtor desires to take the oath for the relief of poor debtors. The magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall direct the jailer to cause the debtor to be present at the examination. The notice which is required by section thirty-three of chapter one hundred and sixty-eight to be given to the creditor may be given to any one of the assessors or to the collector of the city or town in which the tax was assessed, any of whom may appear at the examination and do all things which a creditor might do upon an arrest or execution. If a debtor is unable to pay such tax, he may be discharged in the same manner as if he were committed upon an execution.

Liability of
collector if
debtor dis-
charged.
1790, 42, § 6.
R. S. 8, § 50.
G. S. 12, § 16.
P. S. 12, § 17.
1888, 390, § 21.
3 Met. 152.

SECTION 29. The collector shall be liable for the tax and the charges of imprisonment of a person who is discharged, unless he arrested and committed such person within one year after the tax was committed to him for collection, or unless he shall be exonerated therefrom by the city or town to which the tax is due.

Collector may
require aid.
1782, 61, § 2.
1785, 70, § 9.
R. S. 8, § 8.
G. S. 12, § 17.
P. S. 12, § 18.
1888, 390, § 22.

SECTION 30. A collector who is resisted or impeded in the exercise of the duties of his office may require any suitable person to aid him; and any such person refusing or neglecting to render such aid shall forfeit not more than ten dollars.

Distrain of
property.
Warrant of
collector.
1785, 70, § 5.
R. S. 8, § 14.
1842, 34.
G. S. 12, § 18.
P. S. 12, § 19.
1888, 390, § 23.
1889, 334, § 6.
5 Allen, 563.

SECTION 31. If a tax assessed upon a person remains unpaid for fourteen days after demand therefor, the collector may issue his warrant to the sheriffs of the several counties, or their deputies, or to any constable or deputy collector of taxes of the city or town for which he is the collector, directing them and each of them to distrain the property or take the body of the person assessed and to proceed as required of collectors in like cases. The warrant shall run throughout the commonwealth, and any officer to whom it is directed may serve it and apprehend the person in any county.

CHAPTER 99, ACTS OF 1908.

AN ACT RELATIVE TO THE COLLECTION OF TAXES AND TO
ARREST FOR NON-PAYMENT THEREOF.*Be it enacted, etc., as follows:*

SECTION 1. A collector of taxes who issues a warrant for the arrest of a person for non-payment of taxes, or the officer to whom he commits the warrant, may at his discretion, after the service of the warrant, allow such person to go free for a period not exceeding fourteen days after said service, at which time, if said person does not pay his tax with all fees and charges due thereon, including one dollar for service of said warrant and five cents for each mile travelled by said officer in the performance of said collection, the said officer shall then arrest the said person on the aforesaid warrant, and commit him to the jail of that county.

SECTION 2. When a collector is credited, pursuant to the provisions of section eighty-three of chapter thirteen of the Revised Laws, with the amount of taxes assessed upon any person committed to jail for the non-payment of his tax, who has not paid his tax, said collector shall also be paid and credited with the fees and charges which have become a part of said taxes and to which he or the officer acting under his warrant is entitled.

COLLECTION BY SUIT.

SECTION 32. If a tax remains unpaid for three months after it has been committed to the collector, he may maintain an action in his own name against the person assessed therefor in the same manner as for his own debt.

1888, 390, § 24.

1889, 334, § 7.

SECTION 33. If a person assessed for a tax dies or becomes insolvent before the payment thereof, or if a tax is assessed upon the estate of a deceased person, the executor, administrator or assignee shall, if a demand has been made upon him therefor, forthwith upon receipt of any money applicable to the payment of the tax, pay the same, and in default shall be personally liable therefor as for his own tax.

Action for tax.
1789, 4.
R. S. 8, § 15.
1859, 171.
G. S. 12, § 19.
P. S. 12, § 20.

Liability of
executor, etc.
1848, 235.
1852, 234.
G. S. 12, § 20.
P. S. 12, § 21.
1888, 390, § 25.
97 Mass. 321.
121 Mass. 222.
149 Mass. 62.

SECTION 34. If personal property in the possession of a corporation or an individual as an accumulating fund

— of trustee of
accumulating
fund.

1878, 189, § 4.
P. S. 12, § 22.
1888, 390, § 28.
123 Mass. 355.
124 Mass. 193,
196.

for the future benefit of heirs or other persons has been duly assessed to them in accordance with clause six of section twenty-three of chapter twelve, and they neglect, for one year after the tax has been committed to the collector, to pay the same, the collector may maintain an action in his own name against the trustee therefor as for his own debt; and the amount paid by said trustee may be allowed in his account.

COLLECTION BY SALE OR TAKING OF LAND.

Unpaid taxes
to be a lien on
land, etc.
1830, 151, § 9.
R. S. 8, § 18.
1856, 239, § 1.
1859, 118,
§§ 1, 2.
G. S. 12, §§ 22,
23.
1878, 266, § 14.
1881, 304, § 4.
P. S. 12, §§ 24,
25.
1888, 390,
§§ 30, 31.
1889, 334, § 9.
7 Pick. 15.
2 Gray, 185.
99 Mass. 31.
106 Mass. 29.
110 Mass. 387.
119 Mass. 295.
120 Mass. 299.
124 Mass. 343.
129 Mass. 379.

SECTION 35. Taxes assessed upon land, including those assessed under the provisions of sections sixteen, seventeen and eighteen of chapter twelve, shall with all incidental charges and fees be a lien thereon from the first day of May in the year of assessment. Such lien shall terminate at the expiration of two years from the first day of October in said year, if the estate has in the mean time been alienated; otherwise it shall continue until an alienation thereof. There shall be no lien for taxes reassessed if the property is alienated before the reassessment. Said taxes, if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale of the real estate, if the lien thereon has not terminated prior to the giving of the notice of sale.

137 Mass. 407, 445.

142 Mass. 577.

154 Mass. 209.

Demand for
payment by
mortgagee,
when.
1848, 166, § 1.
G. S. 12, § 24.
P. S. 12, § 26.
1888, 390, § 32.
1889, 334, § 10.

SECTION 36. If a mortgagee of land situated in the place of his residence, before the first day of September of the year in which the tax is assessed, gives written notice to the collector that he holds a mortgage on land, with a description of the land, the demand for payment shall be made on the mortgagee instead of the mortgagor.

— at design-
ated place.
1794, 68, § 1.
R. S. 8, §§ 20,
21.
1848, 166, § 2.
G. S. 12, §§ 25,
26.
P. S. 12, §§ 27,
28.
1888, 390,
§§ 33, 34.
1889, 334, § 11.
1899, 425, § 1.

SECTION 37. If a mortgagee or an owner of land causes a notice, designating a place in the city or town in which such land lies at which all papers relative to taxes on such land which are to be served on him may be left, to be recorded in January of any year in the office of the clerk of such city or town and, during said month, to be delivered to the collector thereof, a notice, summons, demand for payment or other paper relating to the taxes on such land which are to be served by the collector shall be served at such place. The collector shall not advertise the sale of such land for two months after the time of a demand so made.

SECTION 38. The collector shall give notice of the time and place of sale of land for payment of taxes by publication thereof. Such notice so published shall contain a substantially accurate description of the several rights, lots, or divisions of the land to be sold, the amount of the tax assessed on each, and the names of all owners known to the collector. 13 Gray, 77. 124 Mass. 66. 126 Mass. 280. 136 Mass. 33.

SECTION 39. If land to be sold is situated in a place the name of which shall have been changed by law within three years preceding the sale, the collector shall designate such place in his notices of the sale by its former and existing name.

SECTION 40. The collector shall, three weeks before the sale, post a notice similar to that required by section thirty-eight in some convenient and public place in his precinct. 1888, 390, § 37. 1889, 334, § 12. 1901, 108. 126 Mass. 280.

SECTION 41. If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction the smallest undivided part of the land which will satisfy the taxes and necessary intervening charges, or the whole, if no person offers to take an undivided part; and may at such sale require of the purchaser an immediate deposit of such sum as he shall consider necessary to insure good faith in the payment of the purchase money, and on failure of the purchaser to make such deposit forthwith, the sale shall be void and another sale may be made as hereinbefore provided.

SECTION 42. The collector may adjourn the sale from time to time not exceeding seven days in all; and he shall give notice of every adjournment by a public declaration thereof at the time and place appointed for the sale.

SECTION 43. The collector shall execute and deliver to the purchaser a deed of the land, which shall state the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey, subject to the right of redemption, all the right and interest which the owner had in the land when it was taken for his taxes. Such deed shall not be valid unless recorded within thirty

Notice of sale of land.
1785, 70, § 7.
R. S. 8, § 24, 25.
1848, 166, § 3.
G. S. 12, § 28, 29.
P. S. 12, §§ 30, 31.
1888, 390, §§ 35, 36.

Designation of place if name has been changed.
1785, 70, § 7.
R. S. 8, § 26.
G. S. 12, § 31.
P. S. 12, § 33.
1888, 390, § 38.

Notice of sale, posting.
1785, 70, § 7.
R. S. 8, § 27.
1848, 166, § 4.
G. S. 12, § 30.
P. S. 12, § 32.

Sale by auction. Disposition of proceeds. Deposit by purchaser.
1785, 70, § 7.
R. S. 8, §§ 28, 29.
G. S. 12, § 33.
P. S. 12, § 35.
1888, 390, § 40.
1900, 376.

13 Gray, 77.
3 Allen, 535.
124 Mass. 65.
126 Mass. 280.
127 Mass. 39.
152 Mass. 203.
154 Mass. 209.
171 Mass. 315.

Adjournment of sale.
R. S. 8, § 30.
G. S. 12, § 34.
P. S. 12, § 37.
1888, 390, § 42.
112 Mass. 535.

Deed to purchaser; contents; record.
1785, 70, § 7.
R. S. 8, § 31.
1848, 166, § 5.
G. S. 12, § 35.
P. S. 12, § 38.
1888, 390, § 43.
1901, 197, 519.

2 Gray, 185.
6 Allen, 576.
118 Mass. 540.
126 Mass. 278.
127 Mass. 39.
134 Mass. 88.
136 Mass. 32.
142 Mass. 576.
154 Mass. 209.
164 Mass. 335.

days after the sale, and, after the expiration of five years from the date of the record thereof, shall be prima facie evidence of all the facts therein contained.

CHAPTER 423, ACTS OF 1902.

AN ACT RELATIVE TO DEEDS GIVEN BY TAX COLLECTORS.

Be it enacted, etc., as follows:

SECTION 1. Section forty-three of chapter thirteen of the Revised Laws is hereby amended by striking out all after the word "sale", in the eleventh line, so as to read as follows:— *Section 43.* The collector shall execute and deliver to the purchaser a deed of the land, which shall state the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey, subject to the right of redemption, all the right and interest which the owner had in the land when it was taken for his taxes. Such deed shall not be valid unless recorded within thirty days after the sale.

CHAPTER 193, ACTS OF 1905.

AN ACT RELATIVE TO DEEDS GIVEN BY TAX COLLECTORS.

Be it enacted, etc., as follows:

SECTION 1. Section forty-three of chapter thirteen of the Revised Laws, as amended by section one of chapter four hundred and twenty-three of the acts of the year nineteen hundred and two, is hereby further amended by inserting after the word "taxes", in the twelfth line, the words:— and the premises conveyed shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto when so taken, — so as to read as follows:— *Section 43.* The collector shall execute and deliver to the purchaser a deed of the land, which shall state the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the

newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey, subject to the right of redemption, all the right and interest which the owner had in the land when it was taken for his taxes, and the premises conveyed shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto when so taken. Such deed shall not be valid unless recorded within thirty days after the sale.

SECTION 44. If it subsequently appears that, by reason of an error, omission or informality in the assessment or the sale, the purchaser has no claim upon the property sold, he may within two years after the date of the deed, offer by writing given to the collector, to surrender and discharge his deed or to assign and transfer to the city or town all his right, title and interest in the premises, as the collector shall elect. Such offer shall contain a specific statement of the reason why the holder has no claim on the land sold, with the evidence upon which he relies, and if such evidence consists of any public record or of facts shown therein, such offer shall contain a specific reference thereto. Upon such surrender and discharge or assignment and transfer, the city or town shall pay to the purchaser the amount which he paid with interest at the rate of ten per cent per annum which payment shall be in full for all damages for any defects in the proceedings or under the warranty in such deed. No city or town and no treasurer or collector thereof shall pay or be liable for any amount due under the provisions of this section unless such statement is filed.

Reimbursement of purchaser on surrender of deed if sale invalid.
1862, 183, § 6.
1878, 266, § 1.
P. S. 12, § 39.
1882, 243, § 3.
1888, 390,
§§ 44, 47.
10 Allen, 49.
129 Mass. 567.
131 Mass. 277.

SECTION 45. Whoever has a title to land under a sale for nonpayment of taxes or other assessment and is a resident of the city or town in which such land lies, shall file with the treasurer of such city or town and in the registry of deeds, a statement of his residence and place of business, with the street and number, if any. Such person, who is not a resident of such city or town or who removes therefrom, shall appoint an agent residing therein, or in the place where the tax deed is recorded, authorized to release such land. He shall also file the statement above

Owner of tax title to file in registry of deeds, etc., a statement of residence, etc.
1882, 243,
§§ 1, 2.
1888, 390,
§§ 45, 46.

required in which he shall also state the name of such agent and his residence and place of business, with the street and number, if any. Whenever a person holding a tax title changes his residence or place of business or agent, he shall file a new certificate. Tender of payment to, and service of process upon, such agent shall be a sufficient tender to, or service upon, the holder of such tax title.

Collector to purchase for city or town if bid insufficient.
1862, 183, §§ 1, 5.
P. S. 12, § 40.
1888, 390, § 48.
112 Mass. 535.

SECTION 46. If at the time and place of sale no person bids for the land so offered for sale an amount equal to the tax and charges, and if the sale has been adjourned one or more times, the collector shall then and there make public declaration of the fact; and, if no bid equal to the tax and charges is then made, he shall give public notice that he purchases for the city or town by which the tax is assessed, the said land as offered for sale at a price not exceeding the amount of the tax and the charges and expenses of the levy and sale, which amount shall be allowed to him in his settlement with such city or town.

Sale to be void if purchase money is not paid within twenty days.
1862, 183, § 3.
P. S. 12, § 41.
1888, 390, § 49.
1889, 334, § 13.

SECTION 47. If the purchaser of such land fails to pay the collector within twenty days after the sale the amount bid by him the sale shall be void, and the city or town shall be deemed to be the purchaser of the land, under the provisions of the preceding section.

126 Mass. 278.

140 Mass. 578.

Deed to city or town. Contents.
1862, 183, § 2.
P. S. 12, §§ 42, 43.
1888, 390, §§ 50, 51.
1889, 334, § 14.
6 Allen, 576.
131 Mass. 57.

SECTION 48. If the city or town becomes the purchaser, the deed to it, in addition to the statements required by section forty-three, shall set forth the fact that no bid was made at the sale or that the purchaser failed to pay the amount bid, as the case may be, and shall confer upon such city or town the rights and duties of an individual purchaser.

Sale of unimproved, etc., land.
1894, 537, §§ 1, 2.

SECTION 49. If unimproved and unoccupied land does not exceed four thousand square feet in area, or is laid out in lots or parcels no one of which exceeds such area, and the taxes unpaid for any one year do not exceed fifty cents on such land, or on any such lot or parcel thereof, the collector may give notice of the sale by publication of an advertisement stating the name of the owner of record of each lot on the first day of May of the year of assessment, the tax due thereon and the number of such lot on a street, way or plan, without further description thereof.

SECTION 50. The collector may convey in one deed to the same purchaser or convey to the city or town, any number of the lots so advertised and sold, and said deed shall state the name of said owner of record of each lot conveyed therein, on the first day of May of said year, the amount of the taxes and cost due for each lot, and the number on the street, way or plan of each lot respectively and need contain no further description of the lot, owner or amount due.

Deeds of such land.
1894, 537, § 3.

SECTION 51. The cost of advertisement shall be apportioned equally among all the lots specified in the advertisement; the cost of the sale shall be apportioned equally among all the lots sold, and the cost of the deed shall be apportioned equally among all the lots conveyed thereby.

Apportionment of cost of advertisement, sale and deed.
1894, 537, § 4.

SECTION 52. Deeds to a city shall be placed in the custody of its collector, and to a town in the custody of its treasurer, and all applications for the redemption of the land conveyed thereby shall be made to such collector or treasurer respectively. Cities and towns may make regulations for the custody, management and sale of such land and for the assignment of tax titles, not inconsistent with law or with the right of redemption.

Custody of tax title deeds to cities and towns. Management of tax titles, how regulated.
1862, 183, §§ 2, 4.
P. S. 12, § 43.
1888, 390, § 51.
1889, 334, § 14.

SECTION 53. If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking the collector may take such land for the city or town, first giving three weeks' notice of his intention to exercise such power of taking; which notice may be served in the manner required by law for the service of subpoenas upon witnesses in civil cases or may be published, and shall conform to the requirements of section thirty-eight. He may also post a similar notice under the provisions of section forty.

Taking of land by collector for taxes. Notice.
1878, 266, § 5.
1881, 304, § 4.
P. S. 12, § 44.
1888, 390, § 52.

SECTION 54. The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon and the incidental expenses and costs to the date of taking, and shall be recorded in the registry of deeds; and the title to the land so taken shall thereupon vest in the city or town subject to the right of redemption.

Instrument of taking, form, contents, effect.
1878, 266, § 5.
P. S. 12, § 46.
1888, 390, § 54.
1892, 109, § 2.

Fees for
taking.

1878, 266, § 13.

P. S. 12, § 47.

1888, 390, § 55.

Sale or taking
to be of entire

estate. In

whose name

to be made.

1881, 304, § 4.

P. S. 12, § 48.

1888, 390, § 56.

175 Mass. 355.

SECTION 55. If land has been so taken there shall be allowed to the collector and added to the tax the charges and fees fixed by section thirteen.

SECTION 56. The assessment, sale or taking may be made in the name of one or more of the record owners at the date of assessment, and if so made, shall, subject to the provisions of section forty-one, be deemed to be in the name of the owner thereof. Every such sale or taking shall be of the whole estate and not of the undivided interest of any joint owner thereof.

Affidavit of

collector, etc.,

to be evidence.

1794, 68.

R. S. 8, §§ 22,

23.

G. S. 12, §§ 27,

32.

1878, 266, § 5.

P. S. 12, §§ 34,

45.

1888, 390,

§§ 39, 53.

SECTION 57. The affidavit of the collector, deputy collector or disinterested person reciting the proceedings required by law in the sale of land for taxes, with copies of the advertisement and notices annexed thereto, recorded within three months after such sale in the registry of deeds, shall be competent evidence of demand, notice and service.

1892, 109, § 1.

152 Mass. 203.

Taxes assessed on the real estate, machinery and merchandise of foreign corporations, as provided by chapter 437, section 71, Acts of 1903; taxes assessed on lands by reason of special benefit received through abatement of nuisances, under the provisions of chapter 381, section 7, Acts of 1905; excise taxes assessed on street railway and electric railroad companies, under the provisions of chapter 463, Part III., sections 69 and 136, chapter 516, section 25, Acts of 1906; also taxes assessed on property of Metropolitan Water and Sewerage Board, under the provisions of chapter 498, Acts of 1906, — are collected in accordance with the provisions of chapter 13 of the Revised Laws.

CHAPTER 349, ACTS OF 1902.

AN ACT RELATIVE TO TAXES ASSESSED UPON FOREIGN CORPORATIONS AND NON-RESIDENT PERSONS DOING BUSINESS IN THE COMMONWEALTH.

Be it enacted, etc., as follows:

Certain for-
eign corpora-
tions, etc.,
may be re-
strained from
doing business
in this Com-
monwealth
until tax is
paid.

SECTION 1. When any foreign corporation or non-resident person doing business in the commonwealth shall for sixty days neglect, refuse or omit to pay a tax lawfully assessed and payable, any court having jurisdiction in equity may upon petition of the collector of taxes of the

city or town where the tax is assessed restrain said corporation or person from doing business in the commonwealth until said tax, with all incidental costs and charges, shall have been paid. Service of process upon any such petition may be made by an officer duly qualified to serve process, by leaving a duly attested copy thereof at the place where the business is carried on.

REDEMPTION.

SECTION 58. The owner of land taken or sold for payment of taxes, including those assessed under the provisions of sections sixteen, seventeen and eighteen of chapter twelve, or his heirs or assigns, may, within two years after the taking or sale, redeem the same by paying or tendering to the collector, if the estate has been taken or purchased by the city or town, the amount of the tax, with ten per cent interest thereon, and all intervening taxes, charges and fees; or by paying or tendering to the purchaser, or his legal representatives or assigns, the original sum, with ten per cent interest thereon and intervening taxes paid by him. In each case he shall also pay not more than three dollars for examination of the title, for a deed of release and for the cost of recording the tax deed or evidence of taking, and shall be credited with any rents and profits received by the purchaser.

He may redeem land so taken or sold as above provided at any time within two years after he has actual notice of the taking or sale: —

First, If the land has been taxed as belonging to persons unknown, and no person has been named in the tax list as owner or occupant.

Second, If the person named in said list is merely a tenant or occupant of the premises, and not the owner thereof.

Third, If there is in the tax lists, notices or deeds any substantial and misleading error in the name of the person taxed.

Fourth, If the person offering to redeem is a mortgagee of record and the tax was not assessed to him.

Redemption of
land taken or
sold for taxes.
1785, 70, § 7.
R. S. 8, § 32.
1850, 96,
§§ 1, 2.
G. S. 12, § 36.
1878, 266, §§ 9,
14.
1879, 73, 94.
1881, 304, § 4.
P. S. 12, § 49.
1888, 390, § 57.
98 Mass. 44.
126 Mass. 278,
335.
127 Mass. 504.
130 Mass. 125.
136 Mass. 267.
148 Mass. 446.
166 Mass. 407.
171 Mass. 315.
174 Mass. 303.
177 Mass. 431.

CHAPTER 325, ACTS OF 1905.

AN ACT RELATIVE TO THE REDEMPTION OF LAND TAKEN
OR SOLD FOR THE PAYMENT OF TAXES.*Be it enacted, etc., as follows:*

SECTION 1. The first paragraph of section fifty-eight of chapter thirteen of the Revised Laws is hereby amended by striking out the words "with ten per cent interest thereon, and", in the seventh line, and by inserting after the word "fees", in the eighth line, the words:— and interest on the whole at the rate of eight per cent per annum, — by striking out the words "with ten per cent interest thereon", in the ninth and tenth lines, and by inserting after the word "him", in the tenth line, the words:— and interest on the whole at the rate of eight per cent per annum, — by striking out the words "not more than three dollars", in the eleventh line, and by striking out the words "for a deed of release and for the", in the twelfth line, and inserting in place thereof the words:— and for a deed of release not more than three dollars in the aggregate; and in addition thereto the actual, — so that said paragraph will read as follows:— *Section 58.* The owner of land taken or sold for payment of taxes, including those assessed under the provisions of sections sixteen, seventeen and eighteen of chapter twelve, or his heirs or assigns, may, within two years after the taking or sale, redeem the same by paying or tendering to the collector, if the estate has been taken or purchased by the city or town, the amount of the tax, all intervening taxes, charges and fees, and interest on the whole at the rate of eight per cent per annum; or by paying or tendering to the purchaser, or his legal representatives or assigns, the original sum and intervening taxes paid by him and interest on the whole at the rate of eight per cent per annum. In each case he shall also pay for examination of the title and for a deed of release not more than three dollars in the aggregate; and in addition thereto the actual cost of recording the tax deed or evidence of taking, and shall be credited with any rents and profits received by the purchaser.

Penalty for
attempt to
collect unlaw-
ful amount for
redemption of

SECTION 59. Whoever knowingly collects or attempts to collect for the redemption of land sold for payment of taxes a sum of money greater than that authorized by the

preceding section shall be punished by a fine of not more than one hundred dollars.

[SECTION 60.¹ If upon reasonable search the purchaser of land sold for payment of taxes, or an agent duly appointed by the purchaser, cannot be found, any person having an interest in the land may redeem it as provided in section fifty-eight, by paying to the treasurer of the place in which it is situated the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of such search, recorded in the registry of deeds, within ninety days after the completion of the search, shall be prima facie evidence of the facts therein stated.]

[SECTION 61.¹ Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the land on which the tax was originally assessed. The certificate, when recorded in the registry of deeds, with a note of reference from such record to the collector's deed shall release and discharge all right and title acquired under the collector's deed. The treasurer shall on demand pay over all money so received to the persons entitled thereto.]

estate.
1891, 288.

Redemption if
purchaser can-
not be found.
1848, 166.
§§ 6, 8.
G. S. 12, § 37.
P. S. 12, § 50.
1888, 390, § 58.

Disposition of
money by
treasurer.
Release of title
under collect-
or's deed.
1848, 166, § 7.
G. S. 12, § 38.
P. S. 12, § 51.
1888, 390, § 59.

CHAPTER 443, ACTS OF 1902.

AN ACT RELATIVE TO THE REDEMPTION OF LAND SOLD FOR TAXES.²

Be it enacted, etc., as follows:

SECTION 1. Chapter thirteen of the Revised Laws is hereby amended by striking out sections sixty and sixty-one and inserting in place thereof the following new sections:— *Section 60.* Any person having an interest in any such land may redeem it as provided in section fifty-eight by paying to the collector of the place in which the land is situated the amount which he would be required to pay to the purchaser, with one dollar additional. *Section 61.* Said collector shall receive any money so paid and give to the person paying it a certificate specifying the amount paid, the name of the person to whom and the real estate on which the tax was originally assessed, and the registry of deeds and the book and page of the records

¹ Repealed. See chapter 443, Acts of 1902.

² Amended. See chapter 325, section 2, Acts of 1905.

therein where the collector's deed is recorded; and the recording of the certificate in said registry shall extinguish all right and title acquired under the collector's deed. The collector shall on demand pay over all money so paid, to the person entitled thereto as determined by him, except that he shall retain one dollar to be accounted for for the use of the city or town, and if the amount so paid is less than the purchaser was entitled to, the balance with interest at ten per cent per annum may after demand therefor be recovered by said purchaser against the person paying such amount, in an action of contract, if such action is commenced within three months after such payment to the collector.

CHAPTER 325, ACTS OF 1905.

SECTION 2. Section sixty-one of said chapter thirteen, as amended by section one of chapter four hundred and forty-three of the acts of the year nineteen hundred and two, is hereby amended by striking out the word "ten", in the fifteenth line, and inserting in place thereof the word: — eight, — so as to read as follows: — *Section 61.* Said collector shall receive any money so paid and give to the person paying it a certificate specifying the amount paid, the name of the person to whom and the real estate on which the tax was originally assessed, and the registry of deeds and the book and page of the records therein where the collector's deed is recorded; and the recording of the certificate in said registry shall extinguish all right and title acquired under the collector's deed. The collector shall on demand pay over all money so paid, to the person entitled thereto as determined by him, except that he shall retain one dollar to be accounted for for the use of the city or town, and if the amount so paid is less than the purchaser was entitled to, the balance with interest at eight per cent per annum may after demand therefor be recovered by said purchaser against the person paying such amount, in an action of contract, if such action is commenced within three months after such payment to the collector.

SECTION 3. Section seventy-five of said chapter thirteen is hereby amended by striking out the word "five", in the third line, and inserting in place thereof the word: — six, — so as to read as follows: — *Section 75.* The

supreme judicial court and the superior court shall have jurisdiction in equity in all cases of taking or sale of land for the payment of taxes if relief is sought within six years after the taking or sale.

SECTION 62. If proceedings have been commenced for the taking or sale of land for a tax assessed thereon, or if the owner of land has neglected, for three months after demand, to pay such tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges and expenses and the amount so paid may be added to the mortgage debt.

Mortgagee may pay taxes, when.
1856, 239, § 2.
G. S. 12, § 39.
1878, 266, § 14.
P. S. 12, § 52.
1888, 390, § 60.
129 Mass. 291.
131 Mass. 278.
170 Mass. 551.

SECTION 63. If the holder of a mortgage takes possession of land thereunder, all taxes due and constituting a lien thereon, and the expenses of any taking or sale which has been commenced or has taken place, may be recovered of him in an action of contract by the collector, or by the purchaser, as the case may be; and upon payment or tender by the mortgagee to the collector or to the purchaser of the amounts so due within the time provided by section fifty-eight for owners of land to make payment, the city or town or the purchaser shall convey to him all the interest acquired by the taking or sale.

— shall pay them on taking possession; entitled to deed on tender.
1856, 239, § 3.
G. S. 12, § 40.
1878, 266, § 14.
1879, 73, 94.
P. S. 12, § 53.
1888, 390, § 61.
5 Allen, 65.
129 Mass. 291.
130 Mass. 126.
131 Mass. 278.
137 Mass. 444.
177 Mass. 431.

SECTION 64. Any part of a tax assessed upon land which is assessed to a mortgagor and mortgagee separately and remains unpaid on the first day of January next following such assessment, may be paid by either party. If a mortgagee pays a tax, interest or costs thereon which by law or by the terms of the mortgage was payable by the mortgagor, the amount so paid shall be added to the mortgage debt. If it is by law or by the terms of the mortgage payable by the mortgagee, and is paid by the mortgagor, the amount so paid shall be deducted from the mortgage debt unless the parties have, in writing, otherwise agreed.

Mortgage taxes payable by either party. To be added to or deducted from mortgage debt.
1881, 304, § 5.
P. S. 12, § 55.
1888, 390, § 63.
131 Mass. 278.

SECTION 65. If a person other than the owner of the fee, rightfully pays the taxes assessed upon land to the collector or treasurer, before a taking or sale, the treasurer or collector shall give him a certificate of such payment stating the name of the person to whom the land is taxed, of the person paying the tax, and a substantially accurate description of the land. Such certificate being

Payment of taxes by person not the owner of the fee.
1856, 239, §§ 1-3.
G. S. 12, § 41.
P. S. 12, §§ 54, 57.
1888, 390, §§ 62, 63, 65.

Effect on
remedy for
illegal assess-
ment.

Assessment of
land taken by
a city or town.
1862, 183, § 8.
1878, 266, § 10.
P. S. 12, § 56.
1888, 390, § 64.

Sale of unre-
deemed land
taken by city
or town.
1862, 183, § 7.
1878, 266, § 10.
P. S. 12, § 58.
1883, 101.
1886, 320, § 1.
1888, 390, § 66.

Proceedings
if no sufficient
bid is made.
1886, 320, § 2.
1888, 390.
§§ 67, 68.

recorded in the registry of deeds within thirty days from its date shall be notice to all persons of such payment and of the lien therefor. A person whose tax is paid by another shall upon repaying the same have the same right to recover it from the city or town, if illegally assessed, which he would have had if the tax had been paid by him under protest in writing.

SECTION 66. If land is taken or purchased by a city or town, taxes shall be assessed thereon as though the same were not so taken or purchased; and shall be deducted from the proceeds of the final sale.

SECTION 67. If no person redeems land taken or purchased by a city or town within the time prescribed by law, its collector for the time being, without any vote or other special authority shall, within two years after the time for redemption has expired, sell the same by public auction, first giving the notice required by the provisions of section forty for sales for taxes; and if, from any cause, such sale shall not be made within two years, it shall be made by the collector when he deems best or at once upon the service upon him of a written demand of any person interested therein. The collector shall state in his notice of sale the smallest amount for which the sale will be made and shall, for the city or town, execute and deliver to the highest bidder therefor a quitclaim deed. He shall deduct from the proceeds of said sale the expense thereof, the amount named in the collector's deed or instrument of taking as due when the same was executed, all interest, charges and subsequent taxes and assessments thereon. The balance shall be deposited with the city or town treasurer to be paid to the person entitled to the land, if demanded within five years; otherwise it shall inure to said city or town.

SECTION 68. If no person bids at such sale said amount or more, or if the person to whom the land is sold does not within ten days pay to the collector the sum bid by him, the collector shall make an affidavit of the facts, which shall be recorded in the registry of deeds within thirty days of the date at which the land was offered for sale, after which said affidavit shall be in the custody of the city or town treasurer, and the same, or a copy thereof, certified by the register of deeds, shall be prima facie evidence of the facts therein stated.

SECTION 69. The collector shall, within thirty days after the recording of said affidavit, take possession of said land in behalf of the city or town, which may make regulations for the custody, management and sale thereof, and taxes shall be assessed thereon in the name of such city or town until it shall be sold; and such subsequent sale and the money received therefrom shall be held as provided in section sixty-seven.

Collector to take possession of unredeemed land held by city or town.
1886, 320, § 3.
1888, 390, § 68.

PROCEEDINGS IF TAX TITLE IS HELD INVALID.

SECTION 70. If a collector has reasonable cause to believe that the title to land which has been sold for the non-payment of taxes or of assessments, a lien for which is enforceable by a sale of land, is invalid by reason of an error, omission or informality in the assessment or sale, he may, within two years after the date of the deed of such land, give notice to the record owner thereof, requiring him, within thirty days thereafter, to release any interest which he may have in such land under said deed, and to receive from the city or town the amount paid therefor with interest at ten per cent or to file with the collector a statement in writing that he refuses to release such interest. Such statement, if recorded in the registry of deeds, shall release the city or town from any liability upon the warranty in said deed.

Proceedings of collector who deems tax title invalid.
1878, 266, § 2.
P. S. 12, § 59.
1888, 390, § 69.
1889, 334, § 15.

SECTION 71. If, within thirty days after such notice, such owner does not comply therewith, the collector shall cause a copy thereof, with an affidavit by himself or by a disinterested person of the service thereof and of the facts in the case, to be recorded in the registry of deeds. A note of reference to the record of said copy shall be made on the margin of the record of the collector's deed therein referred to; and from the time of such record the interest payable by reason of a breach of warranty in such deed shall cease, and all right and title which may have been acquired under such deed shall be held to be released. The collector shall give notice of such proceedings to the treasurer of the city or town, who shall, upon reasonable demand, pay over out of any funds in his hands the amount due in respect of said deed to the persons entitled thereto.

Notice to holder of such title.
1878, 266, § 3.
P. S. 12, § 60.
1888, 390, § 70.

Re-assessment
and collection.
Disclaimer of
title by taking.
1878, 266,
§§ 4, 7.
P. S. 12, §§ 61,
62.
1888, 390,
§§ 71, 72.
1889, 334, § 15.

SECTION 72. If the invalidity of a title described in section seventy was caused by an error, omission or informality in the assessment, the collector, after obtaining from the holder of the deed a release of his interest or after causing a copy of the notice to be filed and recorded as provided in the preceding section, shall forthwith notify the board by which the tax or assessment was laid, which shall forthwith re-assess it as provided in section eighty-six of chapter twelve. If such invalidity was caused by an error, omission or informality in the proceedings of the collector, he shall, after obtaining such release or after filing and recording such copy, forthwith collect the unpaid tax or assessment in conformity to law. If the collector has reasonable cause to believe that a tax title, held by a city or town under a sale or taking for payment of a tax, is invalid by reason of any error, omission or informality in the assessment, sale or taking, he may disclaim and release such title by an instrument under his hand and seal, duly recorded in the registry of deeds.

LIEN OF CO-TENANTS.

Tenant in com-
mon, etc., pay-
ing tax, to have
lien on interest
of co-tenant.
1875, 236, § 1.
P. S. 12, § 63.
1888, 390, § 73.

SECTION 73. A tenant in common or joint tenant, who pays the entire tax assessed upon the land held jointly or in common, shall have a lien upon the interest of each of his co-tenants, to secure the payment to him of the proportion of such tax payable by each of said co-tenants respectively, with the costs of enforcing the same; but any person whose tax has been so paid by his co-tenant shall have the same right to recover it back if illegally assessed as he would have had if the tax had been paid under a protest by him in writing.

Enforcement
and dissolution
of lien.
1875, 236,
§§ 2-5.
P. S. 12, §§ 64,
65.
1888, 390,
§§ 74, 75.
148 Mass. 444.

SECTION 74. Such lien may be enforced in the manner provided for enforcing liens on buildings and land; and shall be dissolved, unless the person desiring to avail himself thereof makes a certificate setting forth a description, sufficiently accurate for identification, of the property intended to be covered by the lien, the names of the several co-tenants and the interest of each therein, the amount of the tax paid, and the amount due from each co-tenant, which shall be subscribed and sworn to by him, or by some one in his behalf, and shall within thirty days after the day of payment of said tax be recorded in the registry of deeds, and unless a suit to enforce it is commenced

within ninety days after the date of recording said certificate. Such lien shall not be valid against a mortgage actually existing and duly recorded prior to the recording of said certificate.

MISCELLANEOUS PROVISIONS.

SECTION 75. The supreme judicial court and the superior court shall have jurisdiction in equity in all cases of taking or sale of land for the payment of taxes if relief is sought within six¹ years after the taking or sale.

10 Met. 101.
11 Gray, 410.
98 Mass. 44.

99 Mass. 209.
112 Mass. 86.
126 Mass. 337.

143 Mass. 59.
150 Mass. 73.
168 Mass. 76.

172 Mass. 436.
175 Mass. 485.
177 Mass. 431.

Relief in equity.
1849, 213, § 2.
1856, 239, § 4.
G. S. 12, § 42.
1878, 266, § 14.
P. S. 12, § 66.
1888, 390, § 76.
1900, 177.

CHAPTER 226, ACTS OF 1908.

AN ACT RELATIVE TO THE REDEMPTION OF REAL ESTATE SOLD FOR NON-PAYMENT OF TAXES.

Be it enacted, etc., as follows:

SECTION 1. In all cases where relief is obtained in equity under section seventy-five of chapter thirteen of the Revised Laws, as amended by section three of chapter three hundred and twenty-five of the acts of the year nineteen hundred and five, if, prior to the commencement of his suit, the plaintiff tendered to the defendant an amount sufficient to cover the original sum, intervening taxes, costs, and interest at the rate of eight per cent per annum, to the date of tender, the defendant shall be entitled to interest at said rate, for two years only from the time of taking or sale, and the court shall allow to the plaintiff such counsel fee as it may deem reasonable; said amount to be deducted from the sum which it is determined the plaintiff must pay the defendant for the redemption of his land.

SECTION 76. A city or town may, by ordinance or by-law, respectively, direct whether its collector shall exercise the power of sale or the power of taking to enforce the lien for taxes; and in default of such ordinance or by-law the collector may exercise either power at his discretion; but the passage of any such ordinance or by-law shall not render invalid any proceedings then pending.

By-laws, etc., to regulate power of sale or of taking by collector.
1878, 266, § 6.
1879, 169.
P. S. 12, § 67.
1888, 390, § 77.

¹ Section 75 was amended by chapter 325, section 3, Acts of 1905, by inserting the word "six" instead of "five."

Posting of tax
list, etc., by
sheriff.
1785, 70.

§§ 3, 4.
R. S. 8, § 34.
G. S. 12, § 43.
P. S. 12, § 68.
1888, 390, § 78.

Sheriff's fees
for collecting.
1785, 70, § 4.
R. S. 8, § 35.
G. S. 12, § 44.
P. S. 12, § 69.
1888, 390, § 79.

Proceedings of
treasurer as
collector.
1817, 69.
1834, 148.
R. S. 8, §§ 36,
61.
G. S. 12, § 45.
1874, 28, § 2.
P. S. 12, § 70.
1888, 390, § 80.
8 Allen, 330.

Deputy col-
lectors, ap-
pointment,
bond.
1874, 28, § 1.
P. S. 12, § 71.
1888, 390, § 81.

SECTION 77. When the tax list and warrant of the assessors is committed to the sheriff or his deputy, he shall forthwith post, in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax within thirty days thereafter.

SECTION 78. If a person pays his tax within said thirty days, the officer shall receive from him for his fees five per cent on the sum assessed; but if a tax remains unpaid after said thirty days, he shall collect the same by distress or imprisonment, or by sale of land as a collector would do. The officer may also levy his fees for service and travel in the collection of each person's tax, as in other cases of distress and commitment, or sale of land.

SECTION 79. If a city or town appoints its treasurer the collector of taxes, he may issue his warrants to the sheriff of the county, or his deputy, or to any constable of the city or town, returnable in sixty days, requiring them to collect any or all taxes due. Such warrants shall be substantially in the same form, and shall confer the same powers as warrants by assessors to collectors.

SECTION 80. The board of aldermen or selectmen may empower any officer authorized to collect taxes to appoint such deputies as he deems expedient. Such deputies shall give bond for the faithful performance of their duties in such sum as the board of aldermen or selectmen may prescribe and shall have the powers of collectors of taxes.

CHAPTER 247, ACTS OF 1908.

AN ACT TO AUTHORIZE THE APPOINTMENT OF WOMEN AS DEPUTY COLLECTORS OF TAXES.

Be it enacted, etc., as follows:

SECTION 1. Section eighty of chapter thirteen of the Revised Laws is hereby amended by inserting after the word "expedient", in the third line, the words:— Any such deputy may be a woman, — so as to read as follows:— *Section 80.* The board of aldermen or selectmen may empower any officer authorized to collect taxes to appoint such deputies as he deems expedient. Any such deputy may be a woman. Such deputies shall give bond for the faithful performance of their duties in such sum as the

board of aldermen or selectmen may prescribe and shall have the powers of collectors of taxes.

SECTION 81. The treasurer or other disbursing officer of any city or town, may, and if so requested by the collector, shall, withhold payment of any money payable to any person whose taxes are then due and wholly or partly unpaid to an amount not exceeding the unpaid tax with interest and costs. The sum withheld shall be paid or credited to the collector, who shall, if required, give a written receipt therefor. The person taxed may in such case have the same remedy as if he had paid such tax after a levy upon his goods. The collector's rights under the provisions of this section, shall not be affected by any assignment or trustee process.

City, etc.,
treasurer may
withhold
money due to
persons owing
taxes.
1878, 266, § 8.
P. S. 12, § 72.
1888, 390, § 82.

SECTION 82. The mayor and aldermen or the selectmen may require the collector once in two months to exhibit to them a true account of all money received on the taxes committed to him, and to produce the treasurer's receipts for all money paid into the treasury by him. If he neglects or refuses so to exhibit his accounts, he shall forfeit two and one-half per cent on the sums committed to him for collection.

Accounts of
collectors to be
exhibited bi-
monthly if re-
quired.
1783, 66,
§§ 1, 2.
R. S. 8, §§ 45,
46.
G. S. 12, §§ 46,
47.
P. S. 12, §§ 73,
74.

1888, 390, §§ 83, 84.

SECTION 83. The collector shall be credited with all sums abated; with the amount of taxes assessed upon any person committed to jail for non-payment of his tax within one year from the receipt of the tax list by the collector, and who has not paid his tax; with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year; with all sums withheld by the treasurer of a city or town under section eighty-one; and with the amount of the taxes and charges where land has been purchased or taken by the city or town for non-payment of taxes.

Credits to col-
lectors for
abatements,
etc.
1785, 42, § 6.
R. S. 8, § 43.
G. S. 12, § 48.
1862, 183, § 5.
P. S. 12, § 75.
1888, 390, § 85.
9 Met. 503.
13 Gray, 324.

SECTION 84. If a collector becomes insane, absconds or removes from the city or town or in the judgment of the board of aldermen or of the selectmen is about so to remove or is otherwise unable to discharge his duty, or if he refuses on demand to exhibit to the board of aldermen or to the selectmen his books, vouchers and accounts of collections as herein provided, the board of aldermen or the selectmen may remove him from office.

Removal by
selectmen of
disqualified
collector.
1783, 10, § 1.
1785, 46, § 15.
1791, 22, § 1.
R. S. 8, § 40.
G. S. 12, § 52.
P. S. 12, § 79.
1888, 390, § 89.
7 Gray, 130.

Tax list of deceased, etc., collector, how completed.
1785, 46, § 5;
70, § 1.
R. S. 8, § 39.
G. S. 12, § 53.
1881, 138, § 1.

Action to recover back taxes paid to collector, when maintainable.
1859, 118, §§ 3, 4.
G. S. 12, § 56.
P. S. 12, § 84.
1888, 390, § 94.
9 Gray, 38.
13 Gray, 476.
1 Allen, 319.
10 Allen, 48.
99 Mass. 209.
102 Mass. 348.
126 Mass. 98.
127 Mass. 502.
129 Mass. 551.
132 Mass. 89.
149 Mass. 242.
151 Mass. 226.
152 Mass. 204.

Forms.
1888, 390, § 98.
1889, 334, § 16.

SECTION 85. If a collector dies or is removed from office or if the term of office of a collector who is paid by a fixed salary expires before the collection of the taxes committed to him is completed, the assessors shall commit to his successor the list of taxes uncollected with their warrant. P. S. 12, §§ 80, 81. 1888, 390, §§ 90, 91. 1 Met. 524.

SECTION 86. No action to recover back a tax shall be maintained, except as provided in section seventy-three, unless it is commenced within three months after payment of the tax nor unless such tax is paid either after an arrest of the person paying it, a levy upon his goods, a notice of a sale of his land, a protest in writing signed by him, or a withholding of money due to him under the provisions of section eighty-one. In an action founded upon an error or irregularity in the assessment or apportionment of a tax, only the amount in excess of the tax for which the plaintiff was liable shall be recoverable; and no sale, contract or levy shall be avoided solely by reason of such error or irregularity.

SECTION 87. The following forms may be used in proceedings for the collection of taxes under the provisions of this chapter, and, if substantially followed, they shall be deemed sufficient for the proceedings to which they respectively relate; but other suitable forms may also be used. These forms may also be used, so far as applicable, in the collection of betterments and other assessments of like character.

SCHEDULE OF FORMS.

NO. 1. — FORM OF DEMAND UNDER SECTION 14.

COLLECTOR'S OFFICE, B, 19 .

To _____
Herewith find your tax bill due 19 , amounting to \$. Payment of the same is hereby demanded. [If interest has been voted by the city or town, add] Interest at the rate of per cent per annum will be charged from 19 . You are hereby notified that unless your tax is paid in fourteen days from this date, with all legal charges, the collector will then proceed to collect the same according to law. C D,
Collector of Taxes for the of .

NO. 2. — FORM OF NOTICE OF SALE OF DISTRAINED PROPERTY UNDER SECTION 21.

COLLECTOR'S SALE.

Distrained upon a warrant of distress for non-payment of taxes, and will be sold by public auction on , the

day of , 19 , at o'clock M., at , unless said taxes, interest and charges shall be paid before the sale, the following described property, to wit: [Here describe the property.]

B, , 19 . C D,
Collector of Taxes for the of .

No. 3. — FORM OF NOTICE OF ADJOURNMENT OF SALE UNDER SECTION 22.

[To the original notice of sale, or a copy thereof, add the following, and post at the place of sale:—]

The collector hereby gives notice that the above sale stands adjourned to , the day of , 19 , at the same hour and place.

B, , 19 . C D,
Collector of Taxes for the of .

No. 4. — FORM OF CERTIFICATE TO BE MADE UPON AN ATTESTED COPY OF WARRANT WHEN CORPORATE STOCK IS SEIZED UNDER SECTION 23.

COLLECTOR'S OFFICE, B, , 19 .

I hereby give notice that I have seized share of the capital stock of the [A B Company] standing in the name of by virtue of a warrant of distress, a copy of which is herewith presented. Said share being seized and distrained for the non-payment of a tax duly assessed upon the said by the assessors of for the year 19 , amounting to the sum of which the said , after due demand, has neglected and refused to pay.

B, , 19 . C D,
Collector of Taxes for the of .

No. 5. — FORM OF COLLECTOR'S WARRANT TO DISTRAIN OR COMMIT UNDER SECTION 31.

COMMONWEALTH OF MASSACHUSETTS.

To the Sheriffs of our several Counties, or their Deputies, or to any Constable of or Deputy Collector of Taxes for the of in the County of

GREETING:

WHEREAS, a resident of in the County of was duly assessed as of the first day of May in the year nineteen hundred and , by the Assessors of the of a tax in the sum of dollars; and the same now, after the expiration of fourteen days from the date of a demand made upon him by me in accordance with law for the payment of the same, remains unpaid; Therefore,

In the name of the Commonwealth of Massachusetts, you and each of you, are required and directed to distrain the goods or chattels of the said person so assessed sufficient to satisfy and pay the amount due for such tax and interest, and all fees and

Given under my hand and seal this _____ day of _____ 19 ____
C D, [SEAL]
Collector of Taxes for the _____ of _____.

Collector of Taxes for the _____ of _____.

NO. 7. — FORM OF CERTIFICATE REQUIRED BY SECTION 27 TO BE
INDORSED ON COPY OF WARRANT IN CASE OF COMMITMENT.

I hereby certify that, by virtue of the warrant, of which the
within is a true copy, for want of goods and chattels whereof to
make distress, I have taken the body of the within named
and committed him to jail, and that the amount which
he is to pay as his tax, interest, charges and fees is
dollars.

E F,
Deputy Collector of Taxes for the of .

NO. 8. — FORM OF SUMMONS UNDER SECTION 15.

To _____ B, , 19 .

Your tax for the year 19 , amounting to \$ (and
interest thereon), is now due. You are required to pay the same
within ten days from this date with twenty cents for this sum-
mons. At the expiration of that time, if the tax is not paid, the
collector will proceed to collect the same according to law.

C D,
Collector of Taxes for the of .

NO. 9. — FORM OF DEMAND OF TAX ON REAL ESTATE UNDER
SECTION 35.

COLLECTOR'S OFFICE, C, , 19 .
To _____

In compliance with the statute I hereby demand of you pay-
ment of _____ dollars, that being the amount of tax assessed
for the year 19 on the estate in this [city or town] [here give
a brief statement of the estate] and owned or occupied by you
at the date of assessment. You are hereby notified that if said
amount, together with the interest, legal costs and charges
thereon, is not paid within fourteen days from this date, the
said estate will be sold by public auction, pursuant to law.

C D,
Collector of Taxes for the of .

NO. 10. — FORM OF COLLECTOR'S NOTICE OF SALE OF REAL ESTATE
TO BE PUBLISHED IN A NEWSPAPER UNDER SECTION 38.

B, , 19 .
The owners and occupants of the following described parcels
of real estate situated in the [city or town] of _____, in the
county of _____ and Commonwealth of Massachusetts, and
the public are hereby notified that the taxes thereon severally
assessed for the years hereinafter specified, according to the list
committed to me as collector of taxes for said _____ by the
assessors of taxes, remain unpaid, and that the smallest undivided
part of said land sufficient to satisfy said taxes, with interest and

all legal costs and charges, or the whole of said land if no person offers to take an undivided part thereof, will be offered for sale by public auction at the _____ in said _____ on _____, 19____, at _____ o'clock _____ M., for the payment of said taxes with interest, cost and charges thereon, unless the same shall be previously discharged. [Here state the name of the party taxed, if known; a substantially accurate description of the estate; the year in which the tax is assessed; and the amount of the tax on each parcel of real estate.]

C D,
Collector of Taxes for the _____ of _____.

NO. 11. — FORM OF AFFIDAVIT OF COLLECTOR, DEPUTY COLLECTOR OR DISINTERESTED PERSON OF DEMAND UNDER SECTION 57 TO BE RECORDED IN THE REGISTRY OF DEEDS.

S, _____, 19____.

I [A B, collector, deputy collector or a disinterested person,] hereby certify that on the _____ day of _____, 19____, I served upon _____ a demand for the payment of a tax of _____ dollars assessed upon him by the assessors of _____, in 19____, upon the estate in said _____ [here give a substantially accurate description of the estate], with a notice that if said amount and interest thereon, together with the legal costs and charges and interest thereon, was not paid within fourteen days from the date thereof, that the said estate would be sold by public auction, pursuant to law.

A B.

COMMONWEALTH OF MASSACHUSETTS.

H _____, ss. _____, 19____.

Then personally appeared the said A B, and made oath that this statement by him subscribed is true.

Before me,

Justice of the Peace.

NO. 12. — FORM OF AFFIDAVIT UNDER SECTION 57, WHEN THE DEMAND IS MADE UPON TWO OR MORE PERSONS.

S, _____, 19____.

I [A B, collector, deputy collector or a disinterested person,] hereby certify that on or since the _____ day of _____, 19____, I served on each of the parties hereafter mentioned, on the date and in the manner specified, as may be seen by reference to their respective names, a demand like the blank hereunto attached, the blanks being first filled with the date, name, amount of the tax, and location of the real estate.

A B.

Names.	Amount of Tax.	Manner and Date of Service.

COMMONWEALTH OF MASSACHUSETTS.

H, , ss. S, , 19 .
Then personally appeared the said A B, and made oath that the above statement by him subscribed is true.
Before me,

Justice of the Peace.

[Here annex the blank form, No. 9, referred to in the affidavit.]

NO. 13. — FORM OF AFFIDAVIT OF POSTING AND PUBLISHING ADVERTISEMENT OF SALE UNDER SECTION 57.

S, , 19 .
I, A B, of , in the County of , and Commonwealth of Massachusetts [*collector, deputy collector or a disinterested person,*] hereby certify that three weeks before the time of sale I witnessed the posting [or posted] pursuant to law the printed notice of the collector of taxes, a copy whereof is hereto annexed, in a convenient and public place in his precinct, to wit: The , in said [city or town], and that said notice was advertised three weeks successively in the , a newspaper published in [city or town] [or if there is no such newspaper, state that fact and add: in said County], the last publication being at least one week before the advertised time of sale; in accordance with law.

A B.

COMMONWEALTH OF MASSACHUSETTS.

H , ss. S, , 19 .
Then personally appeared the above named , and made oath that the foregoing statements by him subscribed are true.
Before me,

Justice of the Peace.

[Here annex a copy of the advertisement.]

NO. 14. — FORM OF DEED UNDER SECTIONS 41 AND 43.

COMMONWEALTH OF MASSACHUSETTS.

To all Persons to whom these Presents may come,
I, , Collector of Taxes for the [city or town] of , in the County of and Commonwealth of Massachusetts,
SEND GREETING:

WHEREAS, the Assessors of Taxes of said of , in the lists of assessments for taxes, which they committed to me to collect for the year one thousand nine hundred and , duly assessed as owner of the land in said , which is hereinafter described, the sum of dollars and cents, for State, County and [City or Town] Taxes thereon; and whereas, on the day of , A. D. 19 , I duly demanded of said [if the demand was made on a mortgagee or an attorney of a non-resident owner, here insert

the fact] the payment of said taxes, so as aforesaid assessed on said land, and the same were not paid; and, whereas, after the expiration of fourteen days from the time of demanding payment of said taxes as aforesaid, the same still remaining unpaid, I duly advertised that the smallest undivided part of said land sufficient to satisfy said taxes with interest and all legal costs and charges, or the whole of said land if no person offers to take an undivided part thereof, would be sold by public auction for the payment of said taxes with interest, and all legal costs and charges, on the day of , A.D. 19 , at o'clock in the noon, at the , in said , by publishing an advertisement thereof, containing also a substantially accurate description, and the name of the owner of said land, and the amount of the taxes so as aforesaid assessed thereon, in the , a newspaper published in , in the county where said land lies, three weeks successively, the last publication whereof was one week before the time appointed for the sale, and by posting the said advertisement in public and convenient places in said , to wit: the , three weeks before the time appointed for said sale; and whereas, said taxes so as aforesaid assessed on said land were not paid, I proceeded at the time and place appointed as aforesaid for the sale, to sell said land by public auction for the discharge and payment of said taxes thereon with interest, and said legal costs and charges [if the sale is adjourned add here], and no person appeared and bid for an undivided part or for the whole of the land thus offered for sale an amount equal to the said taxes, interest, costs and charges, and I thereupon, at said time and place appointed for said sale, adjourned said sale until the day of , A. D. 19 , at o'clock in the noon, at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects and for the same cause, I adjourned said sale [here state the successive dates, hours and places to which the sale was adjourned], and then and there made public proclamation of said adjournments; and at the time and place so fixed and proclaimed for making said sale on each of the several days, I proceeded to offer for sale said land by public auction for the payment of said taxes, interest, costs and charges, and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, interest, costs and charges,* until on the day of , A. D. 19 , the time and place so fixed for said sale by the last of the said adjournments [use such of these averments as will conform to the facts], I proceeded again to offer for sale by public auction for the payment of said taxes, interest, costs and charges, the smallest undivided part of said land sufficient for the payment of said taxes with interest and legal costs and charges, [and no person offering at said auction to take an undivided part of said land, the whole of said land was struck off to of in the county of and State of for the sum of dollars and cents, he being the highest bidder therefor:] [If an offer is

made for an undivided part substitute for the portion in brackets the following: and of in the county of and State of offered at said auction to take one undivided part of said land and to pay therefor the amount of said taxes with interest and the legal costs and charges, and that being the smallest undivided part of said land offered to be taken for the payment of said taxes, interest, costs and charges, one undivided part of said land was struck off to said .]

Therefore, know ye, that I, the said Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the said sum of dollars and cents to me paid by said , the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said [the following described land, the same being the land taxed as aforesaid, to wit: Here describe the land.]. [If a sale is made of an undivided part substitute for the words in brackets the following: one undivided part of the following described land, being the land taxed as aforesaid, to wit: Here describe the land.]

To have and to hold the same, to the said , h heirs and assigns, to and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said collector, do covenant with the said , h heirs and assigns, that the sale aforesaid has, in all particulars, been conducted according to law.†

In witness whereof, I, the said , Collector as aforesaid, have hereunto set my hand and seal, this day of , in the year of our Lord one thousand nine hundred and .

[SEAL.]

Collector of Taxes for the of .
Signed, sealed and delivered in presence of .

ss.

19 .

Then personally appeared the above named , Collector of Taxes for the of , and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Justice of the Peace.

NO. 15. — FORM OF DEED WHEN THE CITY OR TOWN IS THE PURCHASER UNDER SECTIONS 46 AND 48.

[Proceed as in No. 14 to the * and continue as follows:—] and no person appeared and bid for the estate thus offered for sale an amount equal to the said taxes, interest, costs and charges, and I thereupon, at said time and place appointed for sale, adjourned said sale until the day of A. D. 19 , at o'clock in the noon at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects and for the same cause I adjourned said sale [here state the successive dates, hours and places to which the sale was adjourned], and then and there made

public proclamation of said adjournments; and at the time and place so fixed and proclaimed for making said sale on each of said several days, I proceeded to offer for sale said real estate by public auction for the payment of said taxes, interest, costs and charges, and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, interest, costs and charges, and at the time and place so fixed for said sale by the last of the said adjournments, namely, on the day of _____, A. D. 19____, at _____ o'clock in the noon, I made a public declaration of all the facts hereinbefore recited; and no person then appeared and bid a sum equal to said taxes, interest, costs and charges [if only one adjournment is made, change these averments to conform to the facts]; and I thereupon then and there immediately gave public notice that I should, and that I then and there did purchase on behalf of the said _____ of _____, said real estate for the sum of _____ dollars and _____ cents, being the amount of said taxes, interest, costs and charges;

Therefore know ye, that I, the said _____, Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell and convey unto the said _____ of _____, the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to the said [city or town] of _____, and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said _____ of _____, and its assigns, that the sale aforesaid has, in all particulars, been conducted according to law. [Conclude as in No. 14 from the †.]

No. 16. — FORM OF DEED TO CITY OR TOWN, WHEN THE PURCHASER FAILS TO PAY, ETC., UNDER SECTIONS 47 AND 48.

[Proceed as in No. 14 to the * and continue as follows:—] and the said real estate was struck off to _____ of _____ in the County of _____ and State of _____ for the sum of _____ dollars and _____ cents, he being the highest bidder therefor; and whereas, the said _____ failed to pay to me the sum offered by him as aforesaid, and receive his deed of the premises bid off by him, within ten days after the said sale, and the said sale became null and void, and the said _____ of _____ thereby became the purchaser of the premises so bid off by the said _____ for the sum of _____ dollars and _____ cents, being the amount of said taxes, interest, costs and charges;

Therefore know ye, that I, the said _____ Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell and convey unto the said _____ of _____, the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to the said _____ of _____, and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said _____ of _____ and its assigns, that the sale aforesaid has, in all particulars been conducted according to law. [Conclude as in No. 14 from the †.]

NO. 17. — FORM OF NOTICE OF INTENTION TO TAKE REAL ESTATE UNDER SECTION 53.

COLLECTOR'S NOTICE.

The owners and occupants of the following-described parcels of real estate situate in the _____ of _____, in the County of _____, and Commonwealth of Massachusetts, and all other persons, are hereby notified that the taxes thereon, severally assessed for the year hereinafter specified, according to the list committed to me as Collector of Taxes for the said _____ of _____, by the Assessors of Taxes of said _____, remain unpaid, and that said parcels of real estate will be taken for the said _____ of _____, on _____ the _____ day of _____

A. D. 19____, at _____ o'clock _____ M., for the payment of said taxes, together with the interest, costs and charges thereon, unless the same shall be previously discharged. [Here state the name of owner or occupant, a description of the parcel or parcels of lands, the year for which the taxes were assessed, and the sum assessed upon each parcel.]

C D,
Collector of Taxes for the _____ of _____.

NO. 18. — FORM OF AFFIDAVIT OF DEMAND AND NOTICE TO BE ANNEXED TO THE INSTRUMENT OF TAKING UNDER SECTION 57.

I, C D, _____ of _____ in the County of _____, and Commonwealth of Massachusetts, on oath depose and say that on the _____ day of _____ A. D. 19____, I, as Collector of Taxes for the _____ of _____, made a written demand on _____ for the amount of the tax assessed by the assessors of said _____ of _____, as of the first day of May, A. D. 19____, upon the said _____, with the interest, costs and charges, then due, on certain real estate situated in said _____ of _____ by [Here state manner in which the demand was made], of which the following is a true copy:—

“COLLECTOR'S OFFICE, _____ 19____.

To _____, I hereby demand of you the payment of _____ dollars and _____ cents, that being the amount of tax assessed for the year 19____ by the assessors of _____, on the real estate [Here describe the estate] owned by you. You are hereby notified that if said amount, together with the interest, costs and charges thereon, is not paid within fourteen days from this date, the said real estate will be taken for said taxes for the said [city

or town] of . Tax, \$; interest, costs and charges, \$.

C D,
Collector of Taxes for the of ."

[If notice is published and posted, add:] And I, the said C D, do further depose and say that I posted and published notices, of which the following is a copy [Here annex a copy of the notice], as follows: A copy thereof was posted on [Here state where posted], and I also published a copy of said notice in the , a newspaper published in said [If there be no such paper published in said town, state the fact and add, "in in said county"], three weeks successively, that the posting of said notices and the first publication thereof was more than fourteen days after making the demand as aforesaid; and I do further depose and say that, at the date of the instrument of taking, hereto annexed, the amount of taxes due on the estate therein described, with the interest, costs and charges, amounted to the sum of dollars and cents, and that the parcel or parcels of land were taken for the reason that the taxes remained unpaid at the time of the said taking.

C D,
Collector of Taxes for the of .

ss.

19 .

Then personally appeared the above named C D, and made oath that the foregoing affidavit by him subscribed is true.

Before me,

Justice of the Peace.

NO. 19. — FORM OF TAKING OF REAL ESTATE UNDER SECTION 54.

Whereas, the tax assessed by the assessors of as of the first day of May, in the year 19 , upon as the owner or occupant of the real estate hereinafter described, was duly committed to me as Collector of Taxes for said of ; and whereas, the said taxes, amounting to dollars and cents, have not been paid; and whereas, a demand for the payment of said taxes and the interest, costs and charges then due was made by me on the said on the day of , last past, in conformity to law; and whereas, notice of my intention to take said real estate by virtue of the authority vested in me as Collector of Taxes for said has been duly made, as by law required; and whereas, the said taxes, at the date of this instrument, remain unpaid; now, therefore, **KNOW ALL MEN BY THESE PRESENTS**, that I, as Collector of Taxes as aforesaid, by virtue of the power and authority in me vested as aforesaid, have taken, and by these presents do take, for the said of , subject to redemption according to law, the following described lot or parcel of land, with the buildings thereon, the same being the estate assessed as aforesaid, to wit: [Here describe the estate.]

The said _____ is the only person known to me as owner of the above described estate.

In witness whereof, I, the said _____, as Collector as afore-said, hereunto set my hand and seal this _____ day of _____, in the year nineteen hundred and _____

C D, [SEAL.]
Collector of Taxes for the _____ of _____.

NO. 20. — FORM OF DEED BY CITY OR TOWN WHEN ESTATE IS REDEEMED UNDER SECTION 58, TO BE EXECUTED BY THE PROPER OFFICERS OF THE CITY OR TOWN.

KNOW ALL MEN BY THESE PRESENTS,
That the _____ of _____, in consideration of _____, to it paid by _____ of _____, the receipt whereof is hereby acknowledged, does hereby remise, release, and forever quitclaim unto the said _____ all the right, title and interest which the said _____ of _____ acquired, by or under a deed made to it by _____, the Collector of Taxes for said [city or town] of _____, dated the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, and recorded with _____ Deeds, Volume _____ Page _____ in and to the following parcel of real estate in said _____, viz.: [Here describe the estate.]

To have and to hold the above released premises, with all the privileges and appurtenances to the same belonging, to the said _____, h _____ heirs and assigns, to h _____ and their use and behoof forever.

In witness whereof, the said _____ of _____ has caused its corporate seal to be hereunto affixed, and these presents to be signed, acknowledged and delivered in its name and behalf by _____, its _____, hereto duly authorized, this _____ day of _____, in the year of our Lord nineteen hundred and _____.

[City or Town] of _____ [SEAL.]

Signed and sealed in presence of _____

By _____

ss.

19 _____

Then personally appeared the above named _____, for the [city or town] of _____, and acknowledged the foregoing instrument to be the free act and deed of said [city or town] of _____

Before me,

Justice of the Peace.

NO. 21. — FORM OF AFFIDAVIT OF A DISINTERESTED PERSON OF SEARCH FOR PURCHASER, HIS AGENT OR ATTORNEY WHEN THEY CANNOT BE FOUND, UNDER SECTION 60.

I, _____, on oath depose and say that in behalf of _____, who claims a right to redeem certain lands situated in the _____ of _____, which were sold by _____, Collector of Taxes for said _____, for non-payment of taxes assessed upon _____

and described in a deed of said Collector to _____, dated
 19 _____, and recorded with _____ Deeds, Volume _____ Page _____
 I have made diligent search for said purchaser in the
 place of which he is described as a resident, and that I have also
 made diligent search for an agent or attorney of such purchaser,
 but after such diligent search have been unable to find either the
 purchaser or any such agent or attorney.

ss.

, 19 .

Then personally appeared the above named _____ and made
 oath that the foregoing statement by him subscribed is true.

Before me,

Justice of the Peace.

**No. 22. — FORM OF RECEIPT BY COLLECTOR TO A MORTGAGEE,
 UNDER SECTION 62.**

COLLECTOR'S OFFICE, _____, 19 .

I, _____, Collector of Taxes for the _____ of _____,
 hereby certify that the Assessors of Taxes of said _____ of _____
 _____, in the list of assessments for taxes, which they com-
 mitted to me to collect for the year one thousand nine hundred
 and _____, duly assessed the sum of _____ dollars
 and _____ cents, as owner of the real estate situated and de-
 scribed as follows, viz.: [Here describe the real estate.]
 and I further certify that the said _____ neglected to
 pay such tax for three months after demand, and I thereupon
 made a demand therefor upon _____ who claimed to be the
 holder of a mortgage upon said real estate; and that the said
 _____ has paid to me the sum of _____ dollars and
 _____ cents, being the amount of said tax, with all interest, costs and
 charges, the receipt of which I hereby acknowledge.

C D,

Collector of Taxes for the _____ of _____.

ss.

, 19 .

Then personally appeared the above named _____ and made
 oath that the foregoing statement by him subscribed is true.

Before me,

Justice of the Peace.

**No. 23. — FORM OF RECEIPT BY COLLECTOR UNDER SECTIONS 63
 AND 65.**

COLLECTOR'S OFFICE, _____, 19 .

I, _____, Collector of Taxes for the _____ of _____,
 hereby certify that the Assessors of Taxes of said _____ of _____
 _____, in the list of assessments for taxes, which they com-
 mitted to me to collect for the year one thousand nine hundred
 and _____, duly assessed the sum of _____ dollars
 and _____ cents, as owner of the real estate situated and de-

scribed as follows, viz.: [Here describe the real estate.]

and I further certify that proceedings have been commenced by me for the sale of said real estate for said tax, and that who claimed to be the holder of a mortgage thereon, has paid to me the sum of dollars and cents, being the amount of said tax, with interest, costs and charges, the receipt of which I hereby acknowledge.

C D,

Collector of Taxes for the of .

ss.

, 19 .

Then personally appeared the above named and made oath that the foregoing statement by him subscribed is true.

Before me,

Justice of the Peace.

NO. 24.—FORM OF NOTICE OF SALE OF UNREDEEMED REAL ESTATE, IN BEHALF OF A CITY OR TOWN, WITHIN TWO YEARS AFTER EXPIRATION OF THE RIGHT OF REDEMPTION, UNDER SECTION 67.

SALE OF UNREDEEMED REAL ESTATE BY THE OF .

COLLECTOR'S OFFICE, , 19 .

In conformity with the laws of the Commonwealth of Massachusetts, the public and all persons interested as former owners or occupants of each of the following described parcels of real estate situated in the of in the County of

and Commonwealth aforesaid, are hereby notified that said parcels have been conveyed according to law to said [city or town] of for non-payment of taxes and assessments and the time within which each of the estates might be redeemed by the owners thereof having expired, each of said parcels will be offered for sale in accordance with Section , of the by public auction at the in said on the

day of A. D. 19 , at o'clock M., and to the highest bidder for each of the several parcels a quitclaim deed will be delivered. For further particulars reference is made to the Registry of Deeds for the County of , the volume and page numbers following the description of each parcel, indicating the record of the deed under which the said of now holds title to the estate described.

The sums set against the several estates show the amounts due thereon respectively for the taxes and assessments for the non-payment of which said estate was sold to [or taken by] the said together with the subsequent taxes and assessments, interest on the same, and all lawful costs and charges. And none of the said estates will be sold for less than the amount set against the said estates, respectively.

[Here set out the name of the original owner or occupant if known, a description of each parcel, the place of registry, volume

and page, the years in which assessed and the least amount for which the sale will be made.]

C D,
Collector of Taxes for the of .

No. 25. — FORM OF DEED OF UNREDEEMED TAX TITLE UNDER
SECTION 67.

KNOW ALL MEN BY THESE PRESENTS.

That, whereas the real estate hereinafter described was by deed of , Collector of Taxes, dated A. D. 19 , and recorded with Deeds, Volume Page , duly conveyed to the [city or town] of , in the County of and Commonwealth of Massachusetts, for the non-payment of taxes, and whereas no person lawfully entitled has, within the time prescribed by law, redeemed said real estate, and whereas I, the Collector of Taxes of the said [city or town] of , acting under section , of the , duly advertised said real estate to be sold by public auction on the day of , 19 , at o'clock in the noon, at the in said [city or town] of by publishing an advertisement thereof, containing a substantially accurate description of said real estate in the , a newspaper published in , three weeks successively, the last publication whereof was at least one week before the time appointed for the sale, and by posting a like advertisement in public and convenient place in said [city or town] of , to wit: the , in said [city or town] and also on said real estate, three weeks before the time appointed for said sale; and whereas, the amounts due on said estate not being paid, the [city or town] of by its Collector of Taxes, thereto duly authorized by statute, proceeded at the time and place appointed as aforesaid for the sale, to sell said real estate by public auction, and said real estate was then and there struck off to , of , in the County of , and State of , for the sum of dollars and cents, he being the highest bidder therefor;

Now, therefore, the [city or town] of by its Collector of Taxes, by virtue of the statutes in such case made and provided, in consideration of dollars and cents paid by said , the receipt whereof is hereby acknowledged, does hereby remise, release, and forever quitclaim unto the said , h heirs and assigns, all the right, title and interest which the said [city or town] of acquired, by or under the deed above mentioned, in and to the following parcel of real estate in said , viz: [Here describe the estate.]

To have and to hold the above released premises, with all the privileges and appurtenances thereto belonging, to the said , h heirs and assigns, to h and their use and behoof forever.

In witness whereof, the said [city or town] of has caused its seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by its Collector of Taxes, hereto duly authorized by law, this day of .

, in the year nineteen hundred and
[City or Town] of

[SEAL.]

C D,

Collector of Taxes.

[To be acknowledged by the Collector as the free act and deed
of the City or Town according to the form prescribed in Form
No. 20.]

**NO. 26. — FORM OF AFFIDAVIT OF THE COLLECTOR OF THE NON-
APPEARANCE OF A PURCHASER, OR THE FAILURE OF THE BIDDER
TO PAY THE SUM BID, UNDER SECTION 68.**

I, C D, Collector of Taxes for the [city or town] of in
the County of and Commonwealth of Massachusetts on
oath depose and say that the advertisement of the sale of unre-
deemed real estate, a copy of which is hereto annexed, was pub-
lished and posted according to law, and that at the time and place
of sale as stated in the same [no person appeared and bid for
the real estate advertised in said advertisement against the name
of the sum or amount therein stated, or more, or the
person to whom the estate is sold does not, within ten days, pay
to the Collector the sum bid by him] and the estate advertised
as aforesaid against the name of was struck off to
for the sum of dollars and cents, he being the
highest bidder therefor. I further depose and say that said
failed to pay to me as such Collector, within ten days,
the sum offered by him for said estate.

C D,

Collector of Taxes for the of

ss.

19 .

Then personally appeared the above named , Collector
of Taxes for the of , and made oath that the
above statement by him subscribed is true.

Before me,

Justice of the Peace.

[Here annex a copy of the advertisement.]

**NO. 27. — FORMS OF NOTICES WHEN TAX TITLE IS DEEMED IN-
VALID, UNDER SECTIONS 70 AND 72.**

[FROM THE ASSESSORS TO THE COLLECTOR.]

OFFICE OF THE BOARD OF ASSESSORS,

19 .

To the Collector of Taxes for the of

Sir: You are hereby notified that the tax assessed as of the
first day of May, 19 , in the name of upon an estate
estimated to contain [here insert the area] land, situated [here
insert the name of street or other description] was invalid by rea-
son of error in assessment; and that any deed given by you in
consequence of a sale for the non-payment of such tax conveyed
no valid title to the purchaser.

Board of Assessors of the

of , by

A B,

One of said Assessors.

No. 28. —

[FROM THE COLLECTOR TO THE HOLDER OF THE TITLE.]

COLLECTOR'S OFFICE, , 19 .

To _____

You are hereby notified that I have reason to believe that the title conveyed to _____ by _____ Collector and recorded with _____ Deeds, volume _____ page _____ of an estate described as follows [here describe estate], in the name of _____ is invalid by reason of an error [in the assessment for the year 19 _____, or in the proceedings for the sale.] [Here give a brief statement of the defect:] _____ and I do hereby, _____, notify and require you, within thirty days from the time when this notice shall be served upon you, to surrender and discharge the deed so given, and to receive from the _____ of _____ the sum due therefor, with interest as provided by law, or to file with the Collector a written statement that you refuse to make such surrender and discharge.

C D,

Collector of Taxes for the _____ of _____.

CHAPTER 560, ACTS OF 1907.

ASSESSMENT OF POLL TAXES AND LISTS OF PERSONS ASSESSED.

SECTION 15. The assessors, assistant assessors, or one or more of them, shall annually, in May or June, visit every building in their respective cities and towns and, after diligent inquiry, shall make true lists containing, as nearly as they can ascertain, the name, age, occupation and residence, on the first day of May in the current year, and the residence on the first day of May in the preceding year, of every male person twenty years of age or upwards, residing in their respective cities and towns, liable to be assessed for a poll tax; and, except in Boston, shall inquire at the residences of the women voters whose names are contained in the list transmitted to them by the registrars under the provisions of section forty-four whether such women voters are resident thereat, and shall thereupon make true lists of the women voters found by them.

Any inmate of the Soldiers' Home in the city of Chelsea shall have the same right as any other resident of that city to be assessed and to vote therein.

The assessors shall, upon the personal application of an assessed person for the correction of any error in their original lists, and whenever informed of any such error,

make due investigation, and, upon proof thereof, correct the same on their books. When informed of the omission of the name of a person who is averred to have lived in the city or town on the first day of May in the current year, and to have been assessed there in the preceding year, they shall make due investigation, and, upon proof thereof, supply the omission on their books. They shall cause all applications, certificates and affidavits received by them under this section to be preserved for two years.

SECTION 16. The assessors, except in Boston, shall from time to time, and before the fifteenth day of July in each year, transmit to the registrars of voters the lists made as provided in the preceding section, or certified copies thereof, and shall promptly transmit to the registrars and to the collector of taxes notice of every addition to and correction in the lists made by them. Every assessor, assistant assessor and collector of taxes shall furnish all information in his possession necessary to aid the registrars in the performance of their duties.

SECTION 17. The assessors of cities, except in Boston, shall, on or before the fifteenth day of July in each year, and the assessors of towns having over five thousand inhabitants according to the latest census, state or national, shall, on or before the first day of August in each year, prepare street lists containing the names of all persons assessed by them for poll taxes for the current year. Such lists for cities and for towns divided into voting precincts shall be arranged by voting precincts. They shall print such lists in pamphlet form, shall deliver to the registrars as many copies thereof as they may require, and shall hold the remaining copies for public distribution. In all other towns they shall, on or before the first day of August in each year, cause lists of all persons assessed therein for poll taxes to be prepared and conspicuously posted in two or more public places in every such town.

SECTION 18. Except in Boston, the assessors shall name or designate in such street lists all buildings used as residences, in their order on the street where they are located, by giving the number or other definite description of each building so that it can be readily identified, and shall place opposite to or under each number or other description of a building the name, age and occupation of every person residing therein on the first day of May of the cur-

rent year and assessed for a poll tax, and his residence on the first day of May of the preceding year.

SECTION 19. If a male person resident in a city or town, except Boston, on the first day of May was not assessed for a poll tax, he shall, in order to establish his right to assessment, present to the assessors before the close of registration a statement under oath that he was on said day a resident of such city or town and liable to pay a poll tax therein, and a list under oath of his polls and estate and shall also produce before the assessors two witnesses, who shall testify, under oath, that they are voters of the ward or town in which such person desires to be registered and that the statement of the applicant is true.

A male person who becomes a resident of a city or town, except Boston, after the first day of May and desires to be registered as a voter shall present to the assessors a statement under oath that he has been a resident of such city or town for six months immediately preceding the election at which he claims the right to vote, and shall produce before the assessors two witnesses, who shall testify under oath that they are voters of the ward or town in which such person desires to be registered and that the statement of the applicant is true. If the assessors are satisfied that such statements are true, they shall, in the first case, assess such applicant for his polls and estate and give him a certificate of assessment, and in the second, give him a certificate that he has been a resident in such city or town the six months preceding such election, and forthwith notify the registrars of voters of the city or town, if in this commonwealth, where such person resided on the first day of May, that they have given such certificate.

SECTION 20. The assessors, except in Boston, shall enter the name and residence of each person thus assessed or certified in a book provided for that purpose, and opposite to each name, the names, occupations and residences of the persons who have testified as above provided.

In every place where voters are registered, the registrars, in Boston the election commissioners, and in every place where oaths are administered as required by this chapter, the assessors, shall post in a conspicuous place a copy of sections four hundred and twenty and four hundred and

twenty-two, printed on white paper with black ink, in type not less than one quarter of an inch wide.

SECTION 21. The assessors shall hold such day and such evening sessions as shall be necessary to carry out the provisions of the two preceding sections.

SECTION 22. All assessments made in accordance with section nineteen shall be subject to the provisions of section seventy-four of chapter twelve of the Revised Laws and shall be entered in the tax list of the collector of taxes and be collected by him according to law.

PROCEEDINGS IN CASES OF FAILURE TO ELECT, AND VACANCIES IN TOWN OFFICES.

SECTION 386. If the assessors of a town, or the selectmen acting as such, shall in any year fail to perform their duties, the county commissioners may appoint three or more inhabitants of the county to be assessors for such town, who shall be sworn, shall hold office until the offices of assessors are filled by the town, and shall receive from the town the compensation of assessors.

SECTION 387. If the office of treasurer or collector of taxes is vacant, or if the treasurer or collector is unable to perform his duties, the selectmen may in writing appoint a treasurer or collector pro tempore, who shall be sworn, give bond in like manner as the treasurer or collector chosen by the town, and hold such office until another is chosen by the town and qualified or the disability is removed. If a treasurer or collector does not, within ten days after his election or appointment, give bond, the selectmen may declare the office vacant and appoint another in his place.

SECTION 389. If there is a failure to elect, or if a vacancy occurs in any town office, other than the offices of selectmen, town clerk, assessor, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, the remaining members shall give notice thereof in writing to the selectmen, who, with the remaining member or members of such board shall, after one week's notice, fill such vacancy by ballot. A majority of the ballots of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall perform the duties of the office until

the next annual meeting or until another is chosen and qualified.

SECTION 390. If a person removes from a town, he shall thereby vacate any town office held by him.

SECTION 391. The proceedings in an election held by reason of a previous failure to elect, or to fill a vacancy, and the qualifications of a person to be elected or appointed, shall be the same as in an original election.

PENALTIES UPON OFFICERS.

SECTION 394. An assessor or assistant assessor who knowingly enters on any list of assessed polls, or causes or allows to be entered thereon, the name of any person as a resident of a building, who is not a resident thereof, shall for each offence be punished by imprisonment for not more than six months.

GENERAL PENALTIES.

SECTION 417. Whoever, being an inmate of a building and liable to be assessed for a poll tax, refuses or neglects to give his true name when asked by an assessor or assistant assessor, or whoever, being an owner or occupant of a building, refuses or neglects to give the full and true information within his knowledge relating to all persons residing in such building, when asked by an assessor or assistant assessor, shall be punished by imprisonment for not more than three months.

SECTION 418. Whoever in Boston, being an inmate of a building and a male resident twenty years of age or upward, refuses or neglects to give his true name, when asked by a member of the listing board or a police officer acting under this chapter, or whoever, being an owner or occupant of a building, or a clerk, superintendent, manager or other person having in charge the affairs of a hotel or lodging house, refuses or neglects to give the full and true information within his knowledge relating to all persons residing in such building, when asked by a member of the listing board or a police officer acting under this chapter, shall be punished by imprisonment for not more than three months.

SECTION 419. Whoever knowingly gives to an assessor or assistant assessor, for the purpose of the assessment of a poll tax, or in Boston to a member of the listing board

or a police officer, for the purpose of making a list of male residents twenty years of age or upwards or women voters, the name of any person as a resident of a building, who is not a resident therein, shall be punished by imprisonment for not more than one year.

SECTION 420. Whoever knowingly or wilfully makes a false affidavit, takes a false oath or signs a false certificate relative to the qualifications of any person for assessment or registration, or in Boston for being listed or given a certificate by the listing board, shall be punished by imprisonment for not more than one year.

SECTION 421. Whoever in Boston aids or abets a person in knowingly or wilfully making a false affidavit, taking a false oath or signing a false certificate, relative to the qualifications of any person for being listed as a resident thereof or given a certificate of such residence by the listing board, shall be punished by imprisonment for not more than one year.

CHAPTER 564, ACTS OF 1907.

AN ACT RELATIVE TO THE TAX COMMISSIONER.

Be it enacted, etc., as follows:

SECTION 1. Section one of chapter fourteen of the Revised Laws is hereby amended by striking out the words "thirty-five hundred", in the sixth line, and inserting in place thereof the words:— five thousand, — so as to read as follows:— *Section 1.* There shall be a tax commissioner appointed by the governor, with the advice and consent of the council, who shall also be the commissioner of corporations, and who shall hold his office for three years from the date of his commission unless sooner removed by the governor. He shall receive in full compensation for the duties of both offices an annual salary of five thousand dollars.

SECTION 2. Section two of chapter fourteen of the Revised Laws, as amended by chapter ninety-nine of the acts of the year nineteen hundred and four, and by chapter three hundred and twenty-two of the acts of the year nineteen hundred and six, is hereby further amended by striking out the said section, and inserting in place thereof the following:— *Section 2.* The commissioner may with the advice and consent of the governor and council appoint, and with their consent remove, a deputy commissioner to

assist him in his duties who shall receive an annual salary of three thousand dollars. In case of a vacancy in the office of commissioner or during the absence or disability of that officer, the deputy commissioner shall perform the duties of the office, and service of process made on him shall be of the same force and effect as if made on the commissioner. The commissioner may also with the advice and consent of the governor and council appoint, and with their consent remove, three assistants at salaries to be approved by the governor and council. The commissioner may also appoint two permanent clerks, the first at a salary of two thousand dollars a year and the second at a salary of fifteen hundred dollars a year, and may procure such additional clerical and other assistance as may be necessary. He may also appoint from time to time such appraisers as may be necessary to appraise property subject to the inheritance tax, who shall receive such compensation for their services as he may fix.

REVISED LAWS, CHAPTER 25.

SELECTMEN.

Selectmen to be assessors, etc., in certain cases. 1899-1700, 26, § 4. 1785, 50, §§ 1, 2; 75, § 2.

SECTION 65. Selectmen shall be assessors of taxes and overseers of the poor in towns which have not authorized the election of such officers; and, before acting as assessors, they shall take the oath required of assessors.

R. S. 15, §§ 52, 53.
G. S. 18, § 50.

P. S. 27, § 101.
1893, 423, § 6.

140 Mass. 389.
145 Mass. 50, 52.

— to notify assessors of receipt of collector's or treasurer's bond.

SECTION 66. They shall, upon the receipt and approval of the bond of a collector of taxes or treasurer, give written notice thereof to the assessors.

1879, 157, § 1.

P. S. 27, § 92.

1893, 423, § 8.

140 Mass. 388.

— penalty for acting before taking oath. R. S. 15, § 54. G. S. 18, § 49. P. S. 27, § 100. 1893, 423, § 9.

SECTION 67. A person who is elected a selectman and who enters upon the performance of his duties before taking the oath of office shall forfeit not more than one hundred dollars.

ASSESSORS.

CHAPTER 579, ACTS OF 1907.

AN ACT RELATIVE TO THE TERMS OF OFFICE AND SALARIES OF ASSESSORS, EXCEPT IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. Each assessor in every city and town of the commonwealth, except in the city of Boston, shall be elected

or appointed to hold office for the term of three years and until his successor is duly elected or appointed: *provided*, that where the number of assessors is fixed at three, there shall be elected or appointed one for a term of three years, one for a term of two years, and one for a term of one year; where the number is fixed at five, there shall be elected or appointed one for a term of one year, two for the terms of two years and two for the terms of three years; where the number of assessors is seven, there shall be elected or appointed two for terms of one year, two for terms of two years and three for terms of three years; where the number of assessors is nine, there shall be elected or appointed three for terms of one year, three for terms of two years and three for terms of three years; and annually thereafter there shall be elected or appointed one, two or three for terms of three years, as the term of office of one, two or three expires. But this proviso shall not apply to cities and towns in which the three year term for assessors is already established.

SECTION 68. An assessor, assistant assessor or other person chosen to assess taxes or to determine or to assist in determining the value of property for the purpose of taxation shall, before entering upon the performance of his duties, take the following oath: —

I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town (or city) of _____ for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue or undervalue any property subject to taxation, and that I will faithfully perform all the duties of said office.

If he neglects to take such oath before entering upon the performance of his duties, he shall forfeit not more than fifty dollars.

G. S. 18, § 53. P. S. 27, § 104. 1785, 50, § 1. R. S. 15, § 57. 1893, 423, § 10. 129 Mass. 577, 578.

SECTION 69. An assessor, assistant assessor or other person chosen to determine the valuation of property for the purpose of taxation who, in order that the tax payers may escape payment of their just proportion of any state or county tax or in order to evade any law limiting municipal indebtedness or the rate of taxation to a percentage

Assessors,
oath of office.
1699-1700, 26,
§ 1.
1809, 127.
R. S. 15, §§ 55,
56.
G. S. 18,
§§ 51, 52.
P. S. 27, §§ 102,
103.
1885, 355,
§§ 1, 2.
1893, 423, § 10.
119 Mass. 77.

— penalty for
neglect to take
oath.
1699-1700, 26,
§ 2.

— penalty for
false valua-
tions.
1885, 355, § 3.

of valuation or for any other fraudulent or corrupt purpose, knowingly fixes the valuation of any property at a smaller or greater amount than its full and fair cash value, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

Assistant assessors, powers and duties.
1809, 127.
R. S. 15, § 56.
G. S. 18, § 52.
P. S. 27, § 103.
1893, 423, § 11.

SECTION 70. Assistant assessors shall, in their respective districts, assist the assessors in making lists of persons liable to be assessed for poll taxes in such districts, in publishing and transmitting lists of persons so assessed, in estimating the value of the real and personal estate in such districts, and in the performance of such other duties as the assessors require.

COLLECTOR OF TAXES.

Constable collector of taxes, when.
1699-1700, 26, § 10.
1785, 70, § 1.
R. S. 15, § 78.

SECTION 76. If a person appointed to collect taxes in a town refuses to serve, or if no person is elected or appointed a collector of taxes, the constables of the town shall be the collectors of taxes.

G. S. 18, § 71. P. S. 27, § 123. 1893, 423, § 17. 6 Gray, 387, 502.

Collector to give bond.
R. S. 15, § 80.
G. S. 18, § 72.
P. S. 27, § 124.
1893, 423, § 18.

SECTION 77. The collector of taxes shall give bond to the town for the faithful performance of his duties, in a sum and with sureties approved by the selectmen.

9 Met. 499. 12 Cush. 112. 8 Gray, 613.
6 Cush. 229. 2 Gray, 613. 156 Mass. 403.

— to have powers of treasurer, when.
1850, 57.
G. S. 18, § 73.
P. S. 27, § 125.
1893, 423, § 19.

SECTION 78. A town may at a meeting called for the purpose authorize its collector of taxes to use all means of collecting taxes which a town treasurer may use when appointed a collector of taxes.

99 Mass. § 72. 101 Mass. § 72. 145 Mass. § 53.

COMPENSATION.

Compensation of town officers.
1893, 423, § 37.

SECTION 95. Town officers shall receive such compensation, unless otherwise provided by law, as the town may determine.

REVISED LAWS, CHAPTER 26.

ASSESSMENT OF WATERING RATE.

1890, 365.
1891, 179,
§§ 2, 4.
1897, 419,
§§ 2, 3.
173 Mass. 71.

SECTION 26. If a city determines that the streets or certain streets or portions of streets shall be watered, in whole or in part at the expense of the abutters, such expense for a municipal year and the proportion thereof to

be borne by abutters and the rate to be assessed upon each linear foot of frontage upon such streets or portions thereof shall be estimated and determined by the board of aldermen and assessed upon the estates abutting on such streets or portions of streets in proportion to the number of linear feet of each estate upon such street or portion thereof so watered. The amount of such assessments upon each estate shall be determined by said board, or, if said board so designates, by the board of public works, board of street commissioners, superintendent of streets or other officer; and such board or officer shall as soon as may be after the first day of May of such municipal year cause a list of such streets or portions thereof to be made, specifying each estate and the number of linear feet thereof abutting thereon, the amount per linear foot and the amount on each estate of such assessment, and certify and commit said list to the assessors of taxes.

COLLECTION OF WATERING RATES.

SECTION 27. The assessors shall assess the tax and shall include such assessment in the tax list and warrant committed by them to the collector of taxes for that municipal year, and it shall be included in the annual tax bill, or if the estate so assessed is otherwise exempt from taxation, it shall be rendered as a tax bill. Such assessment shall be a lien upon the estate, and shall be levied, collected, re-assessed, paid, apportioned, or bear interest and become payable, in the same manner as, and shall be a part of, the tax for that year on such estate; but the assessors shall make no abatement thereof except upon the recommendation of the board or officer by whom the list was certified to them.

1891, 179, § 3.
1897, 419,
§§ 3, 4.

REFERENCES TO THE STATUTES REGULATING TAX- ATION BY THE LOCAL ASSESSORS.

ALPHABETICALLY ARRANGED.

TOGETHER WITH NOTES OF SOME OF THE MORE
IMPORTANT DECISIONS.

ABATEMENTS.

Rev. Laws, c. 12, §§ 73-84.

Under R. L., c. 12, § 73, an application to the assessors of a city or town for an abatement of taxes need not be in writing. *Page v. Melrose*, 186 Mass. 361.

The list of taxable property required of tax payers by R. L., c. 12, § 41, the filing of which within the time fixed by the notice is made by section 74 of the same chapter a prerequisite to an abatement of taxes, must be sworn to before one of the persons authorized to administer the oath by section 43 of the same chapter. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

Assessors cannot abate a tax after their term of office has expired. *Cheshire v. Howland*, 13 Gray, 321.

If a poll tax is assessed upon a person who is, in the judgment of the assessors, unable to contribute fully towards the public charges, within the meaning of Pub. Stats., c. 11, § 5, cl. 12, or upon a person not an inhabitant of the city or town, it is within the power of the assessors of their own motion to abate the tax, as a tax which ought not to have been assessed; and their right so to abate it for the purpose of preventing the person from gaining a settlement in the city or town cannot be tried in a petition for a writ of mandamus brought against the collector of taxes to compel him to receive payment of the tax after it has been abated. *Gordon v. Sanderson*, 165 Mass. 375.

Taxes assessed in one year may be abated by the assessors of the succeeding year, if the applicant for abatement has complied with the laws as to the time and manner of his application. *Carlton v. Ashburnham*, 102 Mass. 348.

The list furnished by a land-owner to the assessors described his estate as consisting of three parcels, but gave the number of acres in one of them only. The assessors estimated the whole estate as containing sixty-five acres. On an application to the county commissioners for an abatement it was agreed that the estate in fact contained "about fifty-five acres, more or less." *Held*, that he was not thereby entitled to an abatement. *Pingree v. Berkshire*, 102 Mass. 76.

A person cannot have an abatement of tax before filing with the assessors the list required by the Pub. Stats., c. 11, § 72, although there is good cause why such a list was not seasonably brought in, and although he has offered to make out a schedule of his estate which the assessors have declined to receive, and has made before them an oral statement of his estate under oath.

The statute of 1865, c. 121, now Pub. Stats., c. 11, § 73, does not dispense with the filing of a sworn list as a necessary preliminary to the abatement of a tax, and the assessors cannot waive the filing of a list. *Charlestown v. County Commissioners*, 101 Mass. 87. *Winnisimmet Co. v. Chelsea*, 6 Cush. 477.

A person can have an abatement of his tax assessed upon property erroneously included by him in his sworn return. *Charlestown v. County Commissioners of Middlesex*, 109 Mass. 270.

Under R. L., c. 12, § 46, if a tax payer has brought in a sworn list of assessable property in accordance with the requirements of the preceding sections of that statute, and has not refused to answer on oath any necessary inquiries of the assessors as to the nature and amount of his property, the assessors must receive the list as true, and lawfully cannot refuse to abate a tax on the ground that the list should have contained property not included in it. *Chase v. Boston*, 193 Mass. 522.

If a tax list is made and filed in good faith, an omission therefrom of a single item of property, if honestly made, will not defeat the application of the person bringing in such list for an abatement of the tax assessed. *Wright v. Lowell*, 166 Mass. 298.

The following case is important in several respects, especially in reference to the powers of county commissioners in cases of abatement, and also as to the effect of an error in the list of personal property handed to the assessors:—

SUPREME JUDICIAL COURT.

SEPTEMBER, 1873.

GREAT BARRINGTON *v.* COUNTY COMMISSIONERS OF BERKSHIRE.

COLT, J. The "tax payer filed with the assessors a list subscribed by him of his estate liable to taxation," and made oath as required by statute. Gen. Stats., c. 11, § 46. The assessors were not bound to receive the list as true, if he neglected to answer on oath the inquiries which were put to him; for the list is not conclusive as to property not embraced in it, which may be disclosed upon such inquiries. *Hall v. County Commissioners of Middlesex*, 10 Allen, 100. The list proved to be inaccurate by reason of the omission of some personal property, which was afterwards admitted to be taxable. But the right to an abatement is not defeated by mere inaccuracy in the list filed; for then one who was once taxed could have no relief if any one item had been omitted which was ultimately held taxable, however doubtful the question might have been originally although honestly omitted from a belief that it was not taxable. The condition imposed by the statute is merely that a list shall be filed with the signature and oath of the tax payer "that it is full and accurate according to his best knowledge and belief." Such a list made and filed in

good faith entitles the party to be heard upon his application for an abatement.

The imperfect descriptions in the list, by reference to the lists of the previous year, might have justified the assessors in rejecting it at the time. But as it was received without objection made to these irregularities, and as they do not affect the questions arising upon the abatement asked, it is too late to make that objection for the first time after the complaint is made to the county commissioners.

The list was properly treated as a substantial compliance with the statute. It is not like *Winnisimmet Co. v. Chelsea*, 6 Cush. 477; for there was in that case an entire neglect to comply with the statute, while here its provisions were met with in all essential particulars. *Charlestown v. County Commissioners of Middlesex*, 101 Mass. 87.

It was found by the commissioners that there was no refusal on the part of the tax payer to answer under oath concerning the nature and amount of his property. But, if it had proved otherwise, there would have been no forfeiture involved in it of the right to an abatement of an illegal tax. Gen. Stats., c. 11, § 25.

The commissioners had full jurisdiction of the petitioner's application for an abatement, and did abate so much of the tax as was assessed on his interest in sundry cargoes at sea.

Their action cannot be revised in this proceeding, if it was competent for them to find as a fact that these cargoes were not taxable as the property of the tax payer.

As a general rule the findings of the commissioners upon matters of fact will not be reviewed on *certiorari*.

Where all the evidence is reported, the inquiry is, whether it will justify the finding as a legitimate inference, not whether the finding is against the weight of evidence. It is enough that there is some evidence to justify it. *Gibbs v. County Commissioners of Hampden*, 19 Pick. 298. *Nightingale, pet'r*, 11 Pick. 168. *Farmington River Water Power Co. v. County Commissioners*, 112 Mass. 206.

Upon the allegations in this petition and the facts stated in the answer, as found by them, we cannot say that the abatement of which the petitioners complain was not legally made upon evidence before them. Nor is it open to the petitioners now to controvert the facts found, or change their effect by proving any of the other facts alleged by them. They have had day in a court of competent jurisdiction, and cannot reverse its decision except for error in law. Petition dismissed with costs. *Great Barrington v. County Commissioners of Berkshire*, 112 Mass. 218.

In Boston, if the assessors refuse to make an abatement, complaint is to be made to the street commissioners. Stat. 1870, c. 337, § 2.

The statutes relating to abatements apply to corporations as well as individuals. *Otis Company v. Ware*, 8 Gray, 509. Upon a complaint to county commissioners for an abatement of taxes, any error or mistake in matter of law may be corrected by writ

of *certiorari*. *Newburyport v. Essex Commissioners*, 12 Met. 211, 8 Cush. 61, 1 Allen, 199.

The opinion in the following case is given in full:—

SUPREME JUDICIAL COURT.

JANUARY TERM, 1883.

J. B. MOORS *v.* BOSTON.

DEVENS, J. The petitioner who brings this proceeding for the purpose of revising the judgment of the street commissioners of Boston acting as county commissioners, in refusing to abate a tax laid by the assessors of Boston upon his property, had seasonably filed a schedule purporting to be a true list of all his property liable to taxation and had made oath to the same. Whether any inquiries were then made of him does not clearly appear, but it is agreed that if such were made they were fully answered. Subsequently the assessors learning of two lots of personal property, for which they considered him to be taxable (not referred to in any inquiries made by them if such were made) added a description of the same to the schedule filed by him, and assessed him thereon, no inquiries having been made by them in relation thereto. We have first to consider therefore, whether the sworn return was conclusive upon the assessors under these circumstances, and then whether they were limited to an assessment of the property returned by the petitioner. The chapter 7, section 22, Revised Statutes, was as follows: "The assessors shall receive as the true valuation of the property of each individual the list, if any, brought in by him according to the provisions of this chapter, unless he shall, on being thereto required by the assessors, refuse to make oath that the same is true." Under this statute it was held that the word valuation was equivalent to "enumeration" or "statement," and not to "estimate of value," that the value of his estate as estimated by the tax payer was not conclusive upon the assessors, but that the enumeration, description and specification of his estate was to be so taken unless the owner on being required to make oath, refused to do so. He could not therefore be lawfully taxed for more property than he had inserted in his list unless he refused to swear that he had any more. *Inhabitants of Newburyport v. County Commissioners*, 12 Met. 211. *Winnisimmet Company v. Chelsea*, 6 Cush. 477. *Lincoln v. Worcester*, 8 Cush. 55. The General Statutes so far altered the law as to provide, referring to the assessors (c. 11, § 25): "They shall receive as true the list brought in by each individual, according to the provisions of this chapter, unless on being thereto required by the assessors he refuses to answer on oath all necessary inquiries as to the nature and amount of his property;" the word "valuation" was thus omitted, and while under the former statute it was held that the return of the tax payer should be adopted as conclusive if upon being required so to do he made an oath to its correctness; under the latter statute the assessors were not bound to take his list as true if by his sworn answers to their inquiries it appeared to be otherwise. The purpose for which inquiries by the assessors were authorized was that they might

thereby correct the list or disregard it, if it appeared by an examination of the party, that from a mistake, oversight or otherwise he had not sworn to a true list of his property. It was not conclusive as to property not included in it which might be disclosed by such inquiries. *Inhabitants of Newburyport v. County Commissioners*, 12 Met. 211. *Hall v. County Commissioners*, 10 Allen, 103. *Great Barrington v. County Commissioners*, 112 Mass. 218. A severe penalty was imposed by Stat. 1869, c. 190 (Pub. Stat., c. 11, § 29), on any one intentionally making a false return or schedule as and for a true list of his taxable property, and by this list the assessors are bound except as above stated. They cannot correct this list upon any information, however satisfactory as to the existence of other taxable property, which is not communicated to the tax payer. Having furnished them with his list, under oath, he is entitled, before he can be assessed upon other property, to have them hear his statements or explanations in regard to it. In *Charlestown v. Middlesex*, 109 Mass. 270, it was held that the list returned to the assessors was not conclusive on one, who by mistake included therein property that was exempt by law, and that he might properly apply for an abatement of the tax thereon. The respondents argue that if such is the case and if property put into the list could be struck out, property which is omitted could be inserted therein. But the power of the assessors or commissioners to abate the tax when it is found that property for which the tax payer was not liable was included in the assessment and thus that he was taxed at more than his just proportion is not limited by the fact that it had been erroneously inserted in his list. On the other hand the assessors must take the list furnished them as true unless they make the examination they are entitled by law to make, give to the tax payer the opportunity intended to be afforded him by inquiry as to the nature and amount of property claimed to be subject to taxation and then determine that the list should be corrected by the insertion of property erroneously omitted. As the proceedings of the assessors were erroneous in imposing a tax upon property not included in the list of the petitioner, it is unnecessary to determine whether a tax could properly have been laid upon the merchandise which was the subject of it. *Certiorari* to issue. *Moors v. Boston*, 134 Mass. 431.

A non-resident who is taxed as a resident on all his personal property, cannot maintain an action to recover back the amount of the tax paid by him under protest, if he had horses and cattle kept in the town assessing the tax, and liable to taxation there under Pub. Stats., c. 11, § 12, cl. 3. *Hicks v. Westport*, 130 Mass. 478.

If a part of a tax assessed to a person upon his real estate is valid, although for the balance of the real estate assessed to him he is not taxable, the remedy is by petition for abatement, and not by bill in equity. *Kelley v. Boston*, 174 Mass. 396.

Where a tax is for a legal purpose, and the assessors have jurisdiction and proceed in accordance with the statutes, their decision as to the nature and amount of the taxable property of a person who has not brought in a list under Pub. Stats., c. 11, § 72 (R. L., c. 12, §§ 74-77), cannot be attacked in any collateral

proceeding, and can be changed only in a proceeding under the statute for an abatement. *Harrington v. Glidden*, 179 Mass. 486.

Where the executors of a will, who also are trustees thereunder, as executors pay under protest a tax on personal property consisting of a debt acknowledged by an instrument under seal made to them as executors, and represent to the assessors that their relation to the property is wholly as executors, on a petition for an abatement of the tax it is not open to them to contend that the tax is invalid because assessed to them as executors rather than as trustees. *Williams v. Brookline*, 194 Mass. 44.

A resident of a certain city, who had taxable personal property there in his individual name, and also had in his name as trustee for a New York corporation of which he was a director certain shares of corporations organized in other States, was assessed and taxed both on the property held by him as an individual and on that held as trustee. He presented no sworn list of his individual property, but, several months after the warrant had been committed to the collector, filed a sworn statement purporting to relate only to the property held by him as trustee, alleging that he had as trustee no property in his hands liable to taxation. In an action brought against him as trustee to recover the tax, the jury found that the assessors "ascertained as nearly as possible the particulars of the personal estate held by the defendant as trustee for the purposes of making this assessment," and that "having obtained those particulars, they estimated such property at its just value according to their best information and belief." The court being of opinion that the evidence fully justified the findings of the jury, *held*, that the defendant could not question the valuation of the assessors, his grievance, if any, being one of overvaluation, for which his only remedy was by the statutory proceeding for an abatement. *Harrington v. Glidden*, 179 Mass. 486.

If a part of a tax assessed to a person upon his real estate is valid, although for the balance of the real estate assessed to him he is not taxable, the remedy is by petition for abatement and not by contract for money had and received. *Bates v. Sharon*, 175 Mass. 293.

In this case which was a petition for the abatement of taxes paid under protest by executors who had settled the estate and distributed the legacies within four months from the proving of the will, in September, 1896, the basis of assessment was the sworn list of the taxable personal property of the testator held by the executors on May 1, 1897, and filed on June 9, as of May 1; and the court rightly found for the executors. *Samuel F. Batchelder and others, executors, v. City of Cambridge*, 176 Mass. 384.

If any part of personal property assessed to the owner in the town of which he is an inhabitant, and also in the city in which it is situated, is properly taxable to him in the town of which he is an inhabitant, the remedy against that town is by an application for an abatement, and not by a suit at law to recover the alleged excess. *Wellington v. Belmont*, 164 Mass. 142.

See PERSONAL PROPERTY, TRUSTS.

If a sufficient list of property subject to taxation is made and filed, a refusal of the person making it to answer upon oath all necessary inquiries as to the nature and amount of his property, on being thereto required by the assessors, while it may relieve the assessors from receiving his list as true, will not prevent him from applying for and obtaining an abatement of an excessive tax. *Wright v. Lowell*, 166 Mass. 298.

In the requirement of R. L., c. 12, § 73, that an application for the abatement of a tax shall be made within six months after the date of the tax bill, the term "tax bill" means the notice which the collector is required to send to each tax payer of the amount of his tax; and such a notice on a postal card properly addressed, stating the amount of the tax, and for what, from whom and to whom it is due and where and when it is to be paid, and stamped with a post mark showing the day on which it was mailed, although not otherwise dated, is a sufficient tax bill within the meaning of the statute, so that an application for an abatement of the tax filed more than six months after the date of such a notice is too late. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

A notice in writing, given by assessors of taxes to a petitioner for an abatement of his taxes, of their decision that the petitioner be given leave to withdraw, is a decision adverse to him, from which an appeal may be taken under Stat. 1890, c. 127 (R. L., c. 12, §§ 76, 78). *Brodline v. Revere*, 182 Mass. 598.

On an appeal to the Superior Court for an abatement of taxes, the facts, that a partial abatement was made by the assessors, that interest was charged upon the tax bill only from January 20, and that the assessors by a letter in February informed the petitioner that the board had voted to take no action toward reducing the assessed valuation of his estate, are evidence justifying a finding that the petitioner made a sufficient oral application for an abatement within six months from the date of his tax bill, as required by R. L., c. 12, § 73. *Page v. Melrose*, 186 Mass. 361.

On an appeal to the Superior Court for an abatement of taxes, the commissioner's report stated that no evidence was offered as to whether or not the assessors issued or published any notice to bring in returns under R. L., c. 12, §§ 41, 74, there was in evidence, produced by the respondent, a list of the petitioner's property on a blank in the usual form indorsed for filing as such, and sworn to by the petitioner before one of the assessors on May 31 of the year in question, and it appeared that the assessors had abated a certain sum from the petitioner's tax as originally assessed. *Held*, that, taking into account the presumption that the assessors proceeded according to law in all their official doings, the evidence justified the commissioner in finding that the petitioner brought in a list of his real and personal estate as required by R. L., c. 12, § 41, seasonably filed within the requirement of section 74. *Page v. Melrose*, 186 Mass. 361.

ASSESSMENTS. TO WHOM ASSESSABLE.

Commonwealth Flats.

Part of Commonwealth flats held under bond for deed from Commonwealth and used for business purposes is not taxable as leased land under Stat. 1904, c. 385. *Corcoran v. Boston*, 193 Mass. 586.

Land taken for a highway and for railroad purposes by a decree of the Superior Court accepting a report of commissioners under the provisions of Stat. 1896, c. 321, authorizing the abolition of certain grade crossings, cannot be taxed to the former owners, although a copy of the decree is not filed in the registry of deeds until after the first of May when the tax is assessed. *Lancy v. Boston*, 186 Mass. 128.

Land taken under the right of eminent domain for a highway or for railroad purposes is not taxable to the owner of the fee. *Lancy v. Boston*, 186 Mass. 128.

Under Pub. Stats., c. 11, § 41 (R. L., c. 12, § 47), which requires assessors to ascertain as nearly as possible the particulars of the estate of any person who has not brought in a list as required by them, and to make an estimate thereof at its just value, according to their best information and belief, an objection, that the description of the personal property assessed is insufficient, is not tenable. *Harrington v. Glidden*, 179 Mass. 486.

ASSESSORS, DUTIES OF, ETC.

Election of. Acts of 1907, c. 560, § 362.

Oath of office. R. L., c. 25, § 68.

Assessment of taxes. General provisions. R. L., cc. 12, 27, § 13.

To assess persons wishing to be taxed. Acts of 1907, c. 560, §§ 15-19.

Correction of names upon tax bills. Acts of 1907, c. 560, § 15.

To furnish information to registrars of voters. Acts of 1907, c. 560, § 16.

To make certificate of portion of tax assessed as State, county or town tax, if required. R. L., c. 12, § 97.

Duties of, in assessment of bank shares. R. L., c. 14, §§ 9-18.

May order collection forthwith from persons of doubtful credit. R. L., c. 13, § 16.

May appeal from decision of tax commissioner. R. L., c. 14, § 13.

Returns to Tax Commissioner of aggregate values, etc. R. L., c. 12, §§ 60, 61.

To include a statement under oath of causes of diminished valuation. R. L., c. 12, § 94.

To return to tax commissioner the names and taxation of corporations, etc. R. L., c. 12, § 93.

Under this section assessors are required to return:—

1. Every Massachusetts business corporation *established* in the town, whether owning any assessable property there or not.

2. Every Massachusetts business corporation owning any real estate or machinery in the town.

3. Every railroad corporation assessed in the town; and also,

4. The *whole amount* of taxes laid or voted to be laid upon the *whole valuation of the town*, and not merely the amount laid upon the valuation of *corporation* property only.

Of assets and indebtedness, etc. R. L., c. 12, § 96.

Of loss sustained by exemption of ships, etc., engaged in the foreign carrying trade. R. L., c. 12, § 95.

Of the property of literary, charitable, benevolent and scientific institutions. R. L., c. 12, § 5, cls. 3, 5; §§ 41, 42, 95.

To assess taxes of watch districts. R. L., c. 31, §§ 16, 17.

Of fire districts. R. L., c. 32, § 63.

To post list of poll tax payers. Acts of 1907, c. 560.

Printing lists of assessed polls. Act of 1907, c. 560.

ASSOCIATIONS.

SUPREME JUDICIAL COURT.

1870.

Shares in associations like the McKay Sewing Machine Association are not taxable as shares in corporations.

MORTON, J. The only question presented in this case is, whether the petitioner is liable to be taxed in Lawrence for the shares in the McKay Sewing Machine Association owned by him. This question must be decided by the construction of the statutes regulating taxation, and not upon any considerations of supposed policy or equity; and we are unable to find any provision of statutes which makes such shares taxable.

The McKay Sewing Machine Association is not a corporation. It has never received an act of incorporation, nor been organized as a corporation, under the general laws. A corporation can only be created and exist by sanction of the Legislature. This is a voluntary association of individuals; and its articles of agreement, although they adopt some of the forms of managing the business usual in corporations, constitute a co-partnership. It cannot sue and be sued as a corporation; its members are individually liable for its debts; and it has none of the special attributes which belong to a corporation duly organized under our laws. *Oliver v. Liverpool and London Life and Fire Ins. Co.*, 100 Mass. 531. *Tyrell v. Washburn*, 6 Allen, 466.

The provision that each member may sell and transfer his interest, and thus introduce a new partner, though unusual, is not inconsistent with the contract of co-partnership. It is clear, therefore, that shares in this association could not be taxed under Gen. Stats., c. 11, § 4, as "stocks in a moneyed corporation," even if any such stocks could be taxed to the owners since the passage of the statute of 1865, c. 283. Being a co-partnership, the laws applicable to that relation must govern its rights and liabilities; and it follows that the personal property held by it

was property taxable in Boston, where its business is carried on, and not in Lawrence. Gen. Stats., c. 11, § 15. *Little v. Cambridge*, 9 Cush. 298.

The petitioner, therefore, was not taxable in Lawrence for his interest in the personal property of the firm. But the tax in question was assessed upon the market value of his shares, treating them as so many shares of corporate stock. No provisions of statute or authorities are cited by which such a tax can be upheld. The property of each partner in a firm is an individual interest in all the assets as a tenant in common. For that interest, if the firm is established in this State, he is taxable in the town which is the business domicile of the firm; if he carries on business in another State, he is taxable at his place of residence. *Bemis v. Alderman of Boston*, 14 Allen, 366. He has no other interest in the firm, which is subject to taxation. The fact that by agreement between the partners, as in this case, the share or interest of each partner in the firm is transferable, does not make it taxable specifically. If such shares have a market value larger than the amount of property held by the firm, it is a speculative value, founded upon the expectation of future profits, and is not property which is taxable under our laws. The argument of the respondents, that these shares are as much property as stocks in corporations, and therefore ought to be taxed, is fallacious, because it necessarily results in double taxation of the same property. Formerly stock in corporations was taxable to the shareholders in the places of their residence, because the corporations were not taxed for any of their personal property except machinery employed in manufactures. To guard against double taxation, the tax acts required assessors to deduct from the value of the shares, the value of all property, real or personal, which was taxed directly to the corporation; and when an equivalent tax or excise was imposed directly upon corporations, the stock of shareholders was exempted from local taxation. Statutes of 1864, c. 208. Statutes of 1865, c. 283. If this tax is upheld, the property of the petitioner is subjected to double taxation,—once in the business domicile of the firm, and once in the town where he resides. We are, therefore, of opinion that the tax assessed by the city of Lawrence upon the petitioner was illegal. We have not deemed it necessary to consider what is the effect of the fact that the legal title to the property of the association is by the articles of agreement, vested in Mr. McKay as trustee. This fact cannot make the case more favorable for the respondents, because, if the property is to be regarded as property held in trust under Gen. Stats., c. 11, § 12, cl. 5, it is clear that it is taxable to the trustee, and not to the petitioner. *Hoadley v. Essex*, 105 Mass. 519.

By c. 275 of the Acts of 1878 (now incorporated in § 86 of c. 11, and §§ 47–49 of c. 13 of the Pub. Stats.), the law relating to the taxation of corporations was made applicable to companies, co-partnerships and other asso-

ciations located in this Commonwealth, in which the beneficial interest is held in shares which are assignable without consent of the other associates specifically authorizing such transfer.

The Sup. Jud. Court, in Suffolk Co., in the case of *Gleason v. McKay*, has held the statute of 1878, c. 275, to be unconstitutional as relating to such associations.

A number of persons formed an association, by an instrument in writing containing numerous articles, for the purpose of buying, selling and leasing railroad rolling stock, to be sold or leased to a certain railroad company, with provisions for admitting other persons to membership. The members of the association were to furnish money for the purchase of the rolling stock, and were to have certificates for the amounts so furnished, providing that the principal sum contributed by each member should be repaid in ten annual instalments, with interest; both principal and interest being payable only out of the rentals received for the rolling stock. A plan was adopted by which the association delivered the property to a corporation as trustee, which issued the certificates to the members of the association, and also executed the leases to the railroad company, with provisions for a rental sufficient to meet the above payments of principal and interest, in addition to expenses, including taxes; and at the end of ten years the rolling stock was to become the property of the railroad company. All contracts relating to any business of the association, involving liabilities for the payment of money, were to be in writing, and made under the direction of the board of managers. The original board of managers was named in the articles of association, but the shareholders were to have the power to remove them and to elect others. At all meetings, every shareholder was to have one vote for each share of stock owned by him, and provision was made for the transfer of shares, and the association was not to be dissolved by the death of members. Every owner of one or more shares was to be entitled to a proportionate share of the rentals received. The meetings of the board of managers were always held in B., and all the business done by them for the association was done there, and the association never had any other place where its business was carried on, and the certificate holders never held any meeting. *Held*, that the association was a partnership; that its place of business was in B.; that rolling stock bought in pursuance of a vote of the board of managers authorizing such purchase, delivered to the corporation as trustee, and leased by the trustee to the railroad company, was personal property employed in the business of the association, within the Pub. Stats., c. 11, § 24; and that, under the Pub. Stats., c. 11, § 20, cl. 5, such property was taxable to the trustee in B. *Ricker v. American Loan and Trust Co.*, 140 Mass. 346.

BANKS.

See NATIONAL BANKS.

BETTERMENTS.

R. L., c. 48, §§ 58-64, c. 50.

For decisions, see cases cited in the margin.

BONDS.

Down to the time of the decision of the court in *Hale v. County Commissioners of Hampshire*, 137 Mass. 111 (1884), the assessors had generally regarded railroad bonds as being "public securities," and not as "debts due;" and that indebtedness could not be offset against such bonds for the purposes of taxation. It was held in that case that such bonds were not "public securities" within the meaning of the Pub. Stats., c. 11, § 4 [now R. L., c. 12, § 4], but were debts due, and the money invested in them was "money at interest," from which the owner was entitled, in determining the amount for which his personal estate should be taxed, to have money upon which he was paying interest deducted. But c. 363 of the Acts of 1888 has since amended said section by inserting after the words "public securities," in the eighth line, the words "the bonds of all railroads including street railways." The effect of this amendment is to place railroad bonds in the same category as public securities. Hence no indebtedness can now be offset against them in the taxation thereof.

Under Pub. Stats., c. 11, §§ 4, 14 [now R. L., c. 12, §§ 4, 16], bonds of a corporation secured by a mortgage of its land executed to and held by a trustee for the bondholders are not taxable to the individual owners thereof as personal property, the trustee having paid a tax assessed upon the whole value of the land equal to the amount of the bonds outstanding. *Field, C.J., Allen & Morton, J.J., dissenting. Knight v. Boston*, 159 Mass. 551. But such bonds are taxable to the holders thereof upon the excess of the amount outstanding over the assessed value of the real estate mortgaged to secure such bonds. *Op. A. G.* 1906, p. 23.

CHURCHES.

See RELIGIOUS SOCIETIES.

COLLECTION OF TAXES.

R. L., c. 13, including forms.

See TAX SALES.

Under R. L., c. 13, § 31, a constable to whom a tax warrant has been issued by a collector of taxes can serve it anywhere in the Commonwealth. This power is not limited by section 79 of the same chapter, providing for the issuing of warrants by the treasurer of a city or town when appointed the collector of taxes. *Beard v. Seavey*, 191 Mass. 503.

Under R. L., c. 13, §§ 31, 87, the keeper of a county jail is liable in an action of tort to the collector of taxes of a city in another county for refusing to receive as a prisoner a delinquent tax payer arrested in the county in which the jail is situated by a constable of the city in the other county on a warrant issued by the collector. *Beard v. Seavey*, 191 Mass. 503.

Under Stat. 1889, c. 334, §§ 1, 4, requiring that before a person could be arrested for non-payment of a tax a demand should be made upon him "by causing to be given," or sent postpaid through the mail, as provided by the act, a notice of the tax to the person assessed, the words "causing to be given" refer to a notice delivered to the tax payer in person, and are not complied with by an actual notice received by mail but not addressed as required by the act in case of a notice by mail. Otherwise under the present statutes. R. L., c. 13, §§ 1, 3. *Hunt v. Holston*, 185 Mass. 137.

A person arrested for non-payment of taxes has a right to require that the provisions of the statute shall have been followed strictly. *Hunt v. Holston*, 185 Mass. 137.

For the purpose of making an arrest under R. L., c. 13, § 26, for non-payment of a tax, the collector has made reasonable search for goods on which to levy when he has requested the delinquent to exhibit goods upon which the levy may be made, and the delinquent has refused or neglected to exhibit them. *Kerr v. Atwood*, 188 Mass. 506.

In an action against a constable for alleged unlawful arrest under a tax warrant, if it does not appear that the defendant made a specific demand upon the plaintiff to exhibit goods upon which to levy before making the arrest, the return of the defendant upon the warrant that he made diligent search for and was unable to find goods of the plaintiff, although not conclusive, is *prima facie* evidence in favor of the defendant. *Kerr v. Atwood*, 188 Mass. 506.

In an action against a constable for alleged unlawful arrest under a tax warrant, if there is evidence that the plaintiff was arrested for non-payment of a tax after the defendant had made reasonable search for goods on which to levy, the questions whether on the facts shown there was unnecessary or improper delay in proceeding to the jail with the plaintiff, or whether the plaintiff was subjected to improper treatment, are for the jury. *Kerr v. Atwood*, 188 Mass. 506.

Under St. 1889, c. 334, § 7 (R. L., c. 13, § 32), which provides that, if a tax remains unpaid for three months after it is committed to the collector, he may sue in his own name to collect it, the statute of limitations does not begin to run until the expiration of the three months, as the collector has no right of action except that given him by the statute. *Harrington v. Glidden*, 179 Mass. 486.

Under Pub. Stats., c. 50, § 5, it is the official duty of a town treasurer who also is collector of taxes to collect sewer assessments in the same way that ordinary taxes are collected, and he has no authority to pay a constable from the town treasury for serving demands for the payment of such assessments. *Murphy v. Clinton*, 182 Mass. 198.

Demands for the payment of sewer assessments are not warrants or other processes within the meaning of Pub. Stats., c. 27, § 119, which it is the duty of constables to serve when directed to them by the selectmen of their town. *Murphy v. Clinton*, 182 Mass. 198.

If by a mistake of the assessors of a city the numbers of the houses on two adjoining parcels of land are transposed in the descriptions entered in the book of assessments, and a mortgagee of one of the parcels asks for the tax bill for the house on which he holds the mortgage, naming its number, and is sent a tax bill for that number which really is for the tax intended to be assessed on the adjoining lot, and at the request of the mortgagee the owner of the house of the number named in the bill pays the bill, both mortgagee and owner acting in good faith, the payment must be applied upon the tax on the house and lot the number of which is named in the bill; and, if the tax on that house and lot is larger than the amount paid, only the balance of the tax remains due. *Hurd v. Melrose*, 191 Mass. 576.

COLLECTORS OF TAXES.

Election by ballot. Acts of 1907, c. 560, § 362.

Appointment in the case of vacancy, etc. Acts of 1907, c. 560, §§ 383, 387.

Bond of. R. L., c. 12, § 67, c. 25, §§ 66 and 67.

Failure to file. Acts of 1907, c. 560, § 387.

Collectors may appoint deputies in certain cases. R. L., c. 13, § 80.

Duties of, in collection of taxes — general provisions. R. L., c. 13.

When to receipt for State, county and town tax separately. R. L., c. 12, § 97.

To make returns to registrars of voters of lists of persons who have paid taxes. Acts of 1907, c. 560.

To give to mortgagor and mortgagee on demand, tax bill showing apportionment of tax. R. L., c. 12, § 18.

Duties and bond to extend to taxes re-assessed. R. L., c. 12, § 87.

Powers in collection of watch and fire districts. R. L., c. 31, § 16, c. 32, § 63.

This court has not jurisdiction in equity to enjoin a city or its collector against collecting a tax which a complainant alleges has been illegally assessed upon him by the board of assessors. *Brewer v. Springfield*, 97 Mass. 152.

A town collector cannot maintain an action against the administrator of the estate of one deceased for the amount of a tax upon personal property assessed to the "estate of" the deceased after the date of the administrator's appointment. *Wood v. Torrey*, 97 Mass. 321.

See *Carleton, administratrix, v. Ashburnham*, 102 Mass. 348, p. 46.

The Pub. Stats., c. 12 [R. L., c. 13], contemplate that taxes shall be paid to a collector of taxes in money; and if the collector, for the convenience of a tax payer or of himself receives a check in payment of a tax, in the absence of any agreement to the contrary, it is to be taken as a conditional payment, and, if the check is not paid, the claim for taxes is not satisfied, but the taxes can still be collected according to law. *Houghton v. Boston*, 159 Mass. 138.

A collector's deed contains a sufficient statement of the cause of the sale of the real estate, if it is intelligible and conveys the title which it was intended to convey, even though the statement does not follow the exact words of the legislative form at the end of Stat. 1888, c. 390, and is less specific than is desirable. *Pixley v. Pixley*, 164 Mass. 335.

See TAX SALES; NATIONAL BANKS; INTEREST; ESTATES OMITTED; TAXES.

CORPORATIONS.

Returns of.

For the various returns to be made by corporations to the tax commissioner, see R. L., c. 14. Acts of 1907, c. 437. Of bank shares, to the assessors, by cashier, R. L., c. 14, § 12.

All corporations existing under the laws of Massachusetts, whose shares are subject to taxation, are taxable under the various provisions of R. L., c. 14, and Acts of 1903, c. 437.

Generally speaking, corporations organized or chartered under the laws of this Commonwealth are not taxable locally for their

personal property, but only for their real estate and fixed machinery.

A corporation organized under the laws of another State, having an office and doing a large part of its business in a city in this Commonwealth, cannot be taxed on money deposited by it in a national bank in that city, and the provisions of the Pub. Stats., c. 11, § 20 [now R. L., c. 12, § 23], that, "All personal estate, within or without the Commonwealth, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, except," etc., do not apply. *Boston Investment Co. v. Boston*, 158 Mass. 461.

Debts due do not come within the description of goods, wares, merchandise, and other stock in trade, taxable under Pub. Stats., c. 11, § 20, cl. 1 [now R. L., c. 12, § 23, cl. 1]. *New York Biscuit Co. v. Cambridge*, 161 Mass. 326.

See NATIONAL BANKS.

Taxation of Real Estate of.

Under the provisions of the R. L., c. 12, §§ 15, 23, cl. 2, the real estate of all corporations (except that of railroads within the five-rod limit, and certain *quasi* public corporations), and the machinery belonging to manufacturing corporations, employed in any branch of manufactures, are taxable in the towns or cities where situated or employed. Other property of the corporation is not so taxable. The following extract from a decision of the Supreme Court is given as establishing the rule that this property must be valued by the assessors upon their *judgment of its value*, and not by ascertaining what the *stock* of the corporation sells for in the market:—

"But, in determining whether the estate of the complainant had been correctly valued, we cannot doubt that the commissioners erred in deciding that the sales of the stock of a manufacturing company furnished the only test of the value of their real estate and machinery for the purposes of taxation. It is true that it was shown that the corporation owned no other property than this real estate and machinery, and that they owed no debts; and these circumstances perhaps, made this species of evidence admissible. But it certainly would not be conclusive, if, indeed, it would be considered to any great extent trustworthy. The price which an individual seven-hundredths part of any estate would command in the market would hardly, in any case, be a test of the value of the real estate as a whole. But when it is considered that it is an interest in an estate incapable of partition, an estate, the use and employment of which is to be controlled by the will of the majority of owners, and which is to be subjected to the risks of such a business as that majority may choose to carry on with it; when its productive value may depend entirely upon the integrity and skill of the persons having a predominant influence in its management, or of those whom they may choose to employ,—it is obvious that a share subject to these contin-

gencies might be of little value, and yet the market value of the whole estate be proportionately much greater."

"In adopting the arbitrary standard of value, and rejecting all other evidence, however competent and appropriate to the issue, a manifest wrong was done, which it is the duty of this court to correct; and the writ of *certiorari* must therefore issue." *Chicopee v. Hampden*, 16 Gray, 38 (1860).

Taxation of Shares in.

The shares in corporations organized under, or chartered by, law of this Commonwealth for the purpose of business or profit in this Commonwealth, are *not* taxable by town or city assessors, unless for school district or parish purposes. A list of these corporations taxed by the State is forwarded to each town and city in the State, in Tax Commissioner's Report, which is a list of corporations whose shares are exempt from local taxation.

Such corporations are taxed upon their franchise by the State under the provisions of the R. L., c. 14, Acts of 1903, c. 437, Acts of 1906, c. 463, 516, at a valuation and rate to be ascertained by the tax commissioner. This tax is collected directly of the corporation; and so much of it as is in proportion to the number of shares actually owned in each city and town in the Commonwealth, is allowed to said city or town respectively in the payment of its State tax.

See NATIONAL BANKS.

Shares of the capital stock of *foreign corporations*, if owned by citizens of this Commonwealth, are taxable to them here by the local assessors for their full value without deducting the value of the machinery and real estate belonging to such corporation, and taxed to it at the place where it is established.

See *Dwight v. Boston*, 12 Allen, 316 (1866).

Property of Foreign Corporation.

Constitutionality of such part of Stat. 1903, c. 437, § 71, as relates to assessment of tax on personal property in this Commonwealth of foreign corporation, upheld irrespective of whether another part of same section with regard to collection of such tax is constitutional, two parts of statute being separable. *Scollard v. American Felt Co.*, 194 Mass. 127.

Provisions of Stat. 1902, c. 349, empowering collector of taxes of city to maintain petition to restrain foreign corporation, delinquent in payment of tax lawfully assessed upon its personal property in such city, from doing business in this Commonwealth, held constitutional, and provisions as to service of process upon defendant are not repealed or superseded by provisions of Stat. 1903, c. 437. *Scollard v. American Felt Co.*, 194 Mass. 127.

Tax upon personal property of foreign corporation situated in this Commonwealth lawfully may be assessed to corporation,

and need not be assessed *in rem* against property itself. *Scol-lard v. American Felt Co.*, 194 Mass. 127.

In an action by the collector of taxes of the town of Salisbury against a foreign corporation supplying the public at Salisbury Beach with water, to recover a tax assessed upon the defendant's water mains and pipes as personal property, on the ground that they were underground pipes laid in public streets by a corporation other than a street railway company within the meaning of Stat. 1902, c. 342, § 1, the case was submitted on an agreed statement of facts without the power to draw inferences, by which it appeared that all the water mains and pipes assessed ran through private land without any question except two hundred feet which were under a way seventy-five feet wide on Salisbury Beach on land which before August, 1903, had belonged to a *quasi* corporation called the Commoners of Salisbury, and that the town in July, 1903, had given to the Commoners of Salisbury a release containing this exception: "Excepting, however, from this conveyance any right of the public and the marsh owners in and to the old way to the marshes as the same now exists, and is used, and in and to the way seventy-five feet wide running across said beach in continuation of the town road leading to the same, . . . and reserving to itself and its successors the right to use and to permit any person residing in said town to use for purposes of travel only . . . the way seventy-five feet wide as now laid out extending from the present highway to the sea. . . . The location of said ways may be changed from time to time as agreed in writing by the selectmen of said town and by said Commoners, their successors and assigns." *Held*, that there was no statement that the way seventy-five feet wide was a public street, and that if inferences could have been drawn it might have been inferred that it was not; so that the case was not brought within the statute, and the water mains and pipes were not taxable as personal property. *Coffin v. Artesian Water Co.*, 193 Mass. 274.

Whether the water mains and pipes of a foreign corporation supplying water to a portion of a town, laid entirely through private land, the corporation "having a lease to maintain said pipes from the owners of the fee," can be assessed to the corporation as real estate, here was not considered, the only question raised being whether the mains and pipes were taxable as personal property. *Coffin v. Artesian Water Co.*, 193 Mass. 274.

In the above case the court said:—

"The defendant, being a foreign corporation, is not taxable upon personal property in this State under the general provisions of the statute, unless the property is within some of the exceptions referred to in R. L., c. 12, § 23. *Flanders v. Cross*, 10 Cush. 516. *Harrington v. Glidden*, 179 Mass. 486-491. The only exception in the statute, relied on by the plaintiff, is that relating to machinery employed in manufactures. It has been decided that pipes and mains like these are not such machinery.

Dudley v. Jamaica Pond Aqueduct Co., 100 Mass. 183. Hittinger v. Westford, 135 Mass. 258. Wellington v. Belmont, 164 Mass. 142."

"The plaintiff also invokes Stat. 1902, c. 342, which amends this section of the Revised Laws. But this statute relates only to 'underground conduits, wires and pipes, laid in public streets by any corporation except street railway companies,' etc. The agreed facts do not show as matter of law that any of the defendant's pipes are laid in a public street. It appears affirmatively that all but two hundred feet of them are not in a public street, and it does not appear that the way seventy-five feet wide is a public street. Indeed, if we were to draw inferences, it would seem probable that it is not a public street. It is described as a continuation of the town road, which implies that it is not a town road. It appears that the Commoners had title and claimed exclusive title to this land for many years, and in the release of the town to them, made later, there is only a reservation of any public rights that may exist, without proof that any do exist. The provision for a change of the location of these ways from time to time by agreement of the parties implies that they are not public streets. The case, therefore, is not brought within the Stat. 1902, c. 342, and, so far as appears, the pipes and mains were not taxable to the defendant as personal property." Coffin v. Artesian Water Co., Essex, November 27, 1906.

Shares in national banks located in this State are taxable in the town or city in which the bank is located.

See NATIONAL BANKS.

Shares in associations. See ASSOCIATIONS.

DAMS.

See REAL ESTATE; WATER POWER.

DECEASED PERSONS.

Taxation of Undistributed Estates of.

R. L., c. 12, §§ 21, 22, 23, cls. 5, 7.

See Carleton, adm'x., v. Ashburnham, 102 Mass. 348.

Under Rev. Stats., c. 7, § 10, cl. 7 [Pub. Stats., c. 11, § 20, cl. 7] [R. L., c. 12, § 23, cl. 7], the personal estate of a deceased person was taxable in the town where he last dwelt, until his executors or administrators give notice to the assessors thereof that it has been distributed and paid over to the persons interested therein.

The personal estate of a deceased person, which is taxable in the town where he last dwelt, under Rev. Stats., c. 7, § 10, cl. 7,

is not taxable in any other town. *Hardy v. Yarmouth*, 6 Allen, 277 (1863).

The life interest terminating after the first of May, the life tenant or his representatives must pay the whole tax for the year. *Holmes v. Taber*, 9 Allen, 246.

A tax assessed upon the personalty of a deceased person to his executor is the debt of the latter; and the collector of taxes may, under the Pub. Stats., c. 12, § 21 [R. L., c. 13, § 33], bring an action against him to recover it more than two years from the time of his giving bond. *Dallinger v. Davis*, 149 Mass. 62.

An executor or administrator must not only make the return called for by § 38 of the Pub. Stats., c. 11 [R. L., c. 12, § 41], of the property in his hands liable to taxation, but must in addition, in case of a partial or total distribution, give notice thereof, under the Pub. Stats., c. 11, § 20, cl. 7 [R. L., c. 12, § 23, cl. 7], to the assessors, stating the names and residences of and the amount paid to the several parties interested who are residents of this Commonwealth, in order to discharge his duty and avoid taxation, if it is within three years of his appointment, for the amount last assessed to him.

Pub. Stats., c. 11, § 20, cl. 7 [R. L., c. 12, § 23, cl. 7], directing that a tax on the estate of a deceased person shall be assessed to the executor or administrator "for the space of three years, unless the same has been distributed and notice of such distribution has been given to the assessors stating the name, residence, and amount paid to the several parties interested in the estate who are inhabitants of the Commonwealth," requires a notice to be given in every case, whether the distributees are inhabitants of the Commonwealth or not. In case they are such inhabitants the further requirement applies. *White v. Mott*, 182 Mass. 195.

Division of Taxes.

If an executor, who has nearly distributed the estate in his hands, is assessed on the first of May for the amount assessed to him in the preceding year, and is allowed by the assessors until June 15 to bring in a list of the property in his hands, and does not give to them the notice and information required by the Pub. Stats., c. 11, § 20, cl. 7 [R. L., c. 12, § 23, cl. 7], in case of a distribution, until the November following, he cannot be said to have complied with the statute, and is liable for the amount so assessed to him. *Vaughan v. Street Commissioners of Boston*, 154 Mass. 143.

If an executor keeps his testator's former shop open, and sells the goods therein, occasionally replenishing the stock with small purchases, although for the sole purpose of settling the estate and closing the business, the stock of goods is taxable to the executor, under Pub. Stats., c. 11, § 20, cl. 1 [R. L., c. 12, § 23, cl. 1], in the city where the shop is hired and the business carried on, although the testator last dwelt in another city. *Cotton v. Boston*, 161 Mass. 8.

See TRUSTS.

DISTRICT TAXES.

Interest may be collected on district taxes when authorized by vote. R. L., c. 12, § 72.

Fire Districts.

R. L., c. 32, §§ 49-70. 11 Met. 374.

Under the Pub. Stats., c. 13, §§ 8-19 [R. L., c. 14, §§ 9-18], the shares in a national bank, of stockholders who reside in a regularly organized fire district in the town in which the bank is located, cannot be subjected to a tax assessed for fire district purposes. *Rich v. Packard National Bank*, 138 Mass. 527.

Improvement Districts.

R. L., c. 25, § 44.

School Districts.

The school district system in this Commonwealth was abolished by Stat. 1882, c. 219.

DIVISION OF TAXES.

Estates in Trust or under Guardianship.

R. L., c. 12, § 24.

When Real Estate is divided.

R. L., c. 12, §§ 88-90.

Of State, County, and Town Taxes.

R. L., c. 12, §§ 54-97.

DOMICIL.

One actually residing in a town, May 1, is taxable there, if he has no domicil for taxation elsewhere, although he then intended to remove to another State, and had taken some steps in that direction. *Carnoe v. Free-town*, 9 Gray, 357 (1857).

See *Bulkley v. Williamstown*, 3 Gray, 493 (1855).

Otherwise, if he had left the town, not intending to return. *Colton v. Longmeadow*, 12 Allen, 598. *Briggs v. Rochester*, 16 Gray, 337 (1860). But see *Borland v. Boston*, 132 Mass. 89.

One not having a domicil in this State had, with a view to his marriage, hired a house in B., from April 1, and moved his furniture to it. April 9 he was married at R., and after a wedding tour, he returned to his house in B., May 2, and continued to reside there.

Held, that his domicil, May 1, for purposes of taxation, was B., and that he was not taxable in R. *Williams v. Roxbury*, 12 Gray, 21 (1858).

Living in B., in this State, with intention to return to N., where one had married, had children and business, then returning to N., out of this State, but leaving family in B. — his children there attending public schools — but always styling himself as of N., are facts sufficient for a jury to find that the person's domicil is N. *Cochrane v. Boston*, 4 Allen, 177 (1862).

If a man really intends to change his residence, and does change it, the motive which prompts him to make the change is immaterial. *Draper v. Hatfield*, 124 Mass. 53 (1878).

The choice of a tax payer as between two places of residence is an element to be considered in determining which is the real domicil; but a choice in favor of one place will not be permitted to control a preponderance of evidence in favor of another. The place of domicil, upon which so many important municipal obligations and privileges depend, is not left by the law to the choice of the citizen, except only as such choice may give character to existing relations and accompanying acts of residence are not in conflict with it. *Thayer v. Boston*, 124 Mass. 146 (1878).

Residing in a place with intention to remain an indefinite period, and without a fixed and settled purpose to return, is sufficient to enable one to acquire a domicil there. *Whitney v. Sherborn*, 12 Allen, 111 (1866).

A minor ward was held to have changed his domicil, in *Kirkland v. Whately*, 4 Allen, 462.

A citizen of Massachusetts removing with his family to another State and retaining no dwelling-place in Massachusetts, though retaining his place of business here, and

intending to retain his domicile here, and to return at some future indefinite time, has no domicile in Massachusetts. *Holmes v. Green*, 7 Gray, 299.

To acquire a domicile there must be a residence in a place, and an intention to make that place one's home. *Viles v. Waltham*, 157 Mass. 542.

A man who owns a house in each of two towns may change his domicile from one of the towns to the other, and, after he has done so, the fact that in a particular year he happens to be living at his house in his former domicile on the first day of May is of no consequence, unless the facts show an intention to resume his former domicile. *Gardiner v. Brookline*, 181 Mass. 162.

One who lets his house in the town of his domicile for several successive years and establishes himself with his family in what appears to be a permanent residence in another town, and intends to go on living in the same way, cannot retain his former domicile merely by desiring to do so and continuing to vote there, without any actual intention of living there again. *Dickinson v. Brookline*, 181 Mass. 195.

One owning a house in a city and another in a town by the sea can change his residence from the city to the town by forming an intention while abiding at his house by the sea of making it his permanent home for an indefinite period, if in pursuance of that purpose he continues to use it as his home; and this change of residence is none the less effected because the intention of the house owner is formed in the autumn, and in the following winter he occupies his house in the city and in the spring goes abroad and does not return to his house at the seashore until June, his family having moved there after the first of May. *Barron v. Boston*, 187 Mass. 168.

KNOWLTON, C.J. This is an action to recover back a tax assessed upon the personal property and poll of the plaintiff on May 1, 1901. The first question is, whether he was a resident of Boston at that time.

He owned a house in Boston, which he occupied a part of the time. He also owned a large estate in Cohasset, consisting of a dwelling house containing twenty rooms, and a farmhouse, stables and a cow house. This he occupied a considerable part of the time in each year. Early in the year 1900 he was a resident of Boston, but he stayed with his family at the house in Cohasset from May to December in that year. The judge who heard the case found as follows: "That in the fall of 1900 Mr. B., having formed the intention of then and there becoming a resident of Cohasset, and while living in his house at Cohasset and before his return to Boston, gave notice to the assessors of the city of Boston that he was a resident of Cohasset; that Mr. B., some time after this notice was given — in December — moved to his Boston house and was not in Cohasset again until June, but his intention of remaining a resident of Cohasset continued uninterrupted; that he left for abroad in April, and before leaving notified his family to be in Cohasset by the first of May, but that as a fact

they were not there until shortly after the first of May. I further found as a fact that Mr. B. did not notify the assessors of the town of Cohasset of his having become a resident there until the summer, in June, 1901, and that Mr. B. had not carried out his intention of becoming a resident of Cohasset by any sufficient overt act; and on these facts I ruled and found the plaintiff was a resident of the city of Boston on May first, 1901, and not of Cohasset."

On this finding of facts the ruling should have been that he was a resident of Cohasset. In *Viles v. Waltham*, 157 Mass. 542, the law as to domicil is stated as follows: "To acquire a domicil there must be residence in a place and an intention to make that place one's home." The only act, apart from the intention of the actor, which is absolutely necessary to the acquisition of a domicil in a city or town, is that at some time the person must go to the place and take up his abode there. If he is abiding there while his domicil is elsewhere, and if while so abiding he forms an intention immediately to make it his home permanently or for an indefinite period, and continues to abide there in pursuance of that purpose, he thereby acquires a new domicil. There is no requirement of law that he shall give notice to assessors or to anybody else. The act of going from one place to another, or some other act indicating a change of residence, is often referred to as a foundation for the introduction in evidence of the person's declarations as a part of the *res gestæ*. Declarations accompanying such acts are often important evidence of intention, bearing upon the question whether there was a *bona fide* change of residence. See *Viles v. Waltham*, *ubi supra*. In *McConnell v. Kelley*, 138 Mass. 372, Chief Justice Morton states the rule as follows: "In determining whether there has been such a change from one place to another, the test is to inquire whether he has in fact removed his home to the latter place with the intention of making it his residence permanently, or for an indefinite time. If he has, he loses his old domicil, and acquires a new one with all its rights and incidents." In *Thayer v. Boston*, 124 Mass. 132, 145, Mr. Justice Colt quoted from *Lyman v. Fiske*, 17 Pick. 231, 234, a part of the definition of domicil as follows: "It is manifest, therefore, that it embraces the fact of residence at a place, with the intent to regard it and make it his home. The act and intent must concur, and the intent may be inferred from declarations and conduct." In *Wilbraham v. Ludlow*, 99 Mass. 587, this is the first head note: "A person legally capable of choosing or changing his domicil, who is residing in a city or town in this Commonwealth with the purpose of there remaining for an indefinite time, and without retaining and keeping up any intention to return to his former home in another city or town in this Commonwealth, has his domicil in the place of his actual residence." Under the law laid down in this and other cases the plaintiff, upon the findings of the judge, as applied to the other admitted facts, acquired a domicil in Cohasset, and a tax upon his poll and his personal estate could not properly be assessed in Boston. *Barron v. Cohasset*, 187 Mass. 168.

The following case is important as showing the limitation of intention in fixing the domicile for taxation.

MELANCTHON W. BORLAND *v.* CITY OF BOSTON.

It is no objection to the sufficiency of a written protest by a tax payer against the payment of a tax, under the Gen. Stats., c. 12, § 56, that it was presented to the collector; that it was written across the face of the tax bill; and that it was not left with the collector but was taken away by the tax payer.

A person having his domicile in Boston, left that city in 1876 with his family to reside in Europe for an indefinite length of time, with the fixed purpose never to return to Boston as a place of residence, and to make some place other than Boston his residence when he should return; and while in Europe, before May 1, 1877, fixed upon a place of residence in another State, but remained in Europe until 1879. *Held*, that he retained his domicile in Boston for the purposes of taxation on May 1, 1877.

LORD, J. In this case, two questions are presented for our decision: First, was the tax paid under such a protest in writing as to entitle the plaintiff to recover it back if it had been illegally assessed? And, second, Were the instructions of the presiding judge upon the matter of a change of domicile correct?

The Gen. Stats., c. 12, § 56, provides that "no tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing." In the case at bar, the question arises upon the last branch of this provision, namely, whether the tax was paid after a protest in writing. The case finds that before the tax was paid there was written across the face of a tax bill, which tax bill was in the usual form, these words: "Both items of this tax are paid under protest, M. Woolsey Borland not being, on May 1, 1877, an inhabitant of Boston, nor then having any personal property or income there taxable, and said taxes having been illegally assessed. Boston, April 1, 1878, M. W. Borland, by J. Nelson Borland, attorney."

No objection is made because of the fact that the protest is signed by attorney, nor is any question made of the authority of the attorney, so that it is to be considered as if signed and presented in person by the plaintiff under the same circumstances in which it was actually presented.

Three objections are made to the sufficiency of this as a written protest: First, That it does not appear to have been presented to a proper officer of the city. Second, That it was not, in and of itself, a separate and independent document with such formalities as would attract the attention of the proper officer who should receive it. Third, That it was not left with an officer of the city, but was taken away by the protesting party.

As to the first of the objections, it is said that "the statute requires the delivery of the protest relied upon to some executive or other officer of the city or town." The counsel for the defend-

ant does not, however, designate the officer to whom, he contends, that it should be delivered; nor does the statute, in express words. Inasmuch as the statute does not state the officer to whom the protest is to be made, we think that by its language there is a strong implication that the protest should be made to the collector, and that, whether a protest made to a different officer would be sufficient or not, a protest properly made by the tax payer to the collector is sufficient. The language of the statute is "No tax paid to a collector shall be recovered back unless it appears that it was paid after . . . a protest by him in writing." The various other conditions, such as arrest of person, notice of sale of land for non-payment, or levy upon his goods, must all be within the knowledge and under the direction of the collector, and not necessarily within the knowledge of any other officer of the city; so that the notice given to the collector would place him and the city in the same relation to the subject of knowledge of protest as to every other of the conditions upon which money could be recovered back. A protest in writing to the collector is therefore enough.

Secondly, it is said that the protest which the law requires is a formal, separate and independent document. But the tax bill by which the tax payer knows that a tax has been assessed upon his poll and his estate comes from the collector, and the amount of it is to be paid to the collector. It would therefore seem that, to insure certainty and identity, the particular tax bill which makes claim of the payment of the illegal tax may properly be called to the attention of the collector as identifying the illegal tax; and a protest being written upon it, and, as in this case, stating "this tax," seems calculated to give more direct, immediate and accurate information of the tax payer's claim than could be derived from any separate and independent protest, however formal and carefully prepared.

The objection also suggested that, in the haste of the receipt of taxes by the collector, a protest across the face of the instrument might not be observed by him, applies in our judgment, with equal force to any other omission of duty in the collector, like the failure to preserve a separate paper handed to him by the tax payer immediately before the presentation of his tax bill and money for the collector's receipt. Indeed, it seems scarcely possible that a collector should take a tax bill into his hands for the purpose of affixing his own signature to it, and actually affix his signature, without observing the writing across the face of his printed bill. But if it were true that the collector would be less likely to take notice of the protest thus presented, than if it had been presented in some other form, it would be no objection to its sufficiency.

The remaining objection is an objection arising from the fault of the defendant rather than from that of the plaintiff. The tax payer has done his whole duty when he has made and presented to the collector a protest in writing against the tax. He cannot be responsible for the disposition of that protest by the officer. The officer may wilfully destroy it. The tax payer cannot be

responsible for that. The collector may carelessly lose possession of it, or he may negligently put it in the wrong place, or deliver it to a wrong person. None of these contingencies can affect the validity of the protest, nor does it make any difference that he carelessly or negligently delivered it to the tax payer himself. It does not appear that the tax payer in this case had any agency in causing it to be redelivered to him; nor do we see how in any mode, in the absence of fraud, any dealing with the protest by the collector after he has received the protest in writing, or by the tax payer after he has performed his whole duty by delivering it to the officer, can affect the rights of the parties.

In the opinion of a majority of the court the protest offered was rightly admitted in evidence.

The other question raised is upon the correctness of the instructions of the presiding judge upon the question of domicile.

The evidence tended to show that the plaintiff was born in Boston in 1824, and had lived there until June, 1876, when he sailed for Europe with his family. He testified that when he left Boston he had definitely formed the intention of not returning to Boston as a resident; that in the fall of 1876 he had decided to make Waterford, Connecticut, his residence, and then formed the intention of purchasing land there, which he bought on May 28, 1877; and that he remained in Europe until 1879, when he returned to this country, and went to Waterford. On this evidence the judge instructed the jury, "that a citizen, by the laws of this Commonwealth, must have a home or domicile somewhere on the first day of May, for the purpose of taxation; that in order to change such home or domicile, once acquired, and acquire a new one, the intention to make the change and the fact must concur; that if the plaintiff, with no definite plan as to length of time he should remain abroad, and no definite purpose about a change of domicile, went to Europe with his family, that would not effect a change of his domicile from Boston, and he would remain liable to taxation there; but that if he left Boston in 1876 with his family to reside in Europe for an indefinite length of time, with the fixed purpose never to return to Boston again as a place of residence, and with the fixed purpose of making some place other than Boston his residence whenever he should return to the United States, and had in his mind fixed upon such place of residence before May 1, 1877, and remained in Europe until after that time, he was not liable to this tax as an inhabitant of Boston on the first of May of that year; that whether he had done enough to make Waterford his home or not, was not essential in this case,—if he had lost his home in or ceased to be an inhabitant of Boston at the time, he was not taxable there."

Certainly, the latter part of this instruction would be understood to be in conflict with the former; for, not referring now to the words used by the judge, the obvious meaning of the whole sentence is, first, to instruct the jury that a man once having a home here is taxable here until both the purpose to change his home and the fact of changing his home concur; and afterwards to instruct them that, if his intention to make another place his

home is formed after he leaves this country, and before the first of May, such intention removes his liability to taxation, even although the fact of change does not concur with the intention. Although there is this obvious inconsistency, it arises partly from inherent difficulties in the case, partly from the impossibility of stating a fixed rule which shall be applicable to all cases, under the infinite variety of circumstances attending them, and the various adjudications which have been made upon the subject. The source of the difficulty is in the use of words of exactly, or substantially, or partially, the same signification, but at different times used with different significations.

There are certain words which have fixed and definite significations. "Domicil" is one such word; and for the ordinary purposes of citizenship, there are rules of general, if not universal, acceptation applicable to it. "Citizenship," "habitaney" and "residence" are severally words which may in the particular case mean precisely the same as "domicil," but very frequently they may have other and inconsistent meanings; and, while in one use of language the expressions a change of domicil, of citizenship, of habitaney, of residence, are necessarily identical or synonymous, in a different use of language they impart different ideas. The statutes of this Commonwealth render liable to taxation in a particular municipality those who are inhabitants of that municipality on the first day of May of the year. Gen. Stats., c. 11, §§ 6, 12. It becomes important, therefore, to determine who are inhabitants, and what constitutes habitaney.

The only case adjudged within this Commonwealth, in which the word of the statute, "inhabitant," is construed to mean something else than "being domiciled in," is *Briggs v. Rochester*, 16 Gray, 337, although that decision is subsequently recognized in *Colton v. Longmeadow*, 12 Allen, 598. In *Briggs v. Rochester*, Mr. Justice Metcalf in speaking of the word "inhabitant," says that it has not the meaning of the word "domicil" "in its strictly technical sense, and with its legal incidents." He says, also, that the word "domicil" is not in the Constitution nor in the statutes of the Commonwealth. So far as the Constitution is concerned, this is correct; but he had evidently overlooked a statute of ten years before, in which the word "domicil" was used, and upon the very subject of taxation, in a proviso in these words: "Provided that nothing herein contained shall exempt said person from his liability to the payment of any tax legally assessed upon him in the town of his legal domicil." Stat. 1850, c. 276; Gen. Stats., c. 11, § 7. This language is a strong legislative assertion that domicil is the test of liability to taxation; and in an opinion given by the justices of this court to the House of Representatives in 1843, in reference to a student's right to vote in the municipality in which he is residing for the purpose of education, it was said, "And as liability to taxation for personal property depends on domicil." 5 Met. 587, 590.

Nor do we think that the opinion in *Briggs v. Rochester* gives the true force, as used in the Constitution, of the word "inhabitant;" for we cannot doubt that for the purposes of taxation the

word "inhabitant" must be used in the same sense as when used in reference to electing and being elected to office; especially as at that time the payment of a tax duly assessed was one of the qualifications of an elector; and more especially as the Constitution itself professes to give its definition of "inhabitant" for the purpose of removing all doubt as to its meaning. Its language is, "And to remove all doubts concerning the meaning of the word 'inhabitant' in this Constitution every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district or plantation where he dwelleth, or hath his home." Const. Mass., c. 1, § 2, art 2.

Nor do we see how the construction given to the statute is consistent with the result at which the court arrived. The learned judge says, "In the statute on which this case depends, we are of opinion that the words 'where he shall be an inhabitant on the first day of May,' mean where he shall have his home on that day." It is, therefore, clear that the learned judge does not give to the word "inhabitant" the meaning which the construction of the statute before referred to authorizes him to give, but he does give the exact definition of the Constitution, to wit, "where he dwelleth, or hath his home;" for these words have not in the Constitution two meanings, but the single signification given to them by the learned judge, "his home," the exact, strict, technical definition of domicile.

We cannot construe the statute to mean anything else than "being domiciled in." A man need not be a resident anywhere. He must have a domicile. He cannot abandon, surrender or lose his domicile until another is acquired. A cosmopolite, or a wanderer up and down the earth, has no residence, though he must have a domicile. It surely was not the purpose of the Legislature to allow a man to abandon his home, go into another State, and then return to this Commonwealth, reside in different towns, board in different houses, public or private, with no intention of making any place a place of residence or home, and thus avoid taxation. Such a construction of the law would create at once a large migratory population.

Although we have said that the case of *Briggs v. Rochester* has been recognized in *Colton v. Longmeadow*, 12 Allen, 598, yet we ought to state that the decision in *Colton v. Longmeadow* was placed upon entirely different grounds. It was there held that the plaintiff had lost his domicile in Massachusetts because he had actually left the Commonwealth and was actually *in itinere* to his new domicile, which he had left this Commonwealth for the purpose of obtaining, and which in fact he did obtain. If it should be deemed sound to hold that a person who, before the first of May, with an intention in good faith to leave this State as a residence and to adopt as his home or domicile another place, is in good faith and with reasonable diligence pursuing his way to that place, is not taxable here upon the first of May, the doctrine should be limited strictly to cases falling within these facts. And both of the cases cited, *Briggs v. Rochester* and *Colton v.*

Longmeadow, would fall within the rule. In each of those cases the plaintiff had determined, before starting upon his removal, not only upon his removal, but upon his exact destination, and in fact established himself, according to his purpose, without delay, and within a reasonable time.

We think, however, that the sounder and wiser rule is to make taxation dependent upon domicil. Perhaps the most important reason for this rule is, that it makes the standard certain. Another reason is, that it is according to the general views and traditions of our people.

One cannot but be impressed by certain peculiarities in *Briggs v. Rochester*. The bill of exceptions in that case begins thus: "It was admitted by both parties, and so presented to the jury, that the only question at issue was the domicil of the plaintiff on the first of May, 1858; and that if he was then an inhabitant of the defendant town, the tax was rightly imposed; but that if he was not on that day an inhabitant of said town, he was not then rightly taxable and taxed therein." Nothing can be more clear than that all parties understood, and the case was tried upon the understanding, that domicil and inhabitancy meant the same thing; otherwise, domicil, instead of being "the only question at issue," would not have been in issue at all. And the judge in giving his opinion says that, if domicil in its strictly technical sense, and with its legal incidents, was the controlling fact, the plaintiff was rightly taxed in Rochester.

Another noticeable fact in *Briggs v. Rochester* is this: that if the tax payer in the pursuit of his purpose is beyond the line of the State before the first of May, he is not liable to taxation in the State; but if by detention he does not cross the line of the State till the first of May, he is taxable here. We cannot adopt a rule which shall make liability to taxation depend upon proximity to a State line.

We have said that we prefer the test of domicil, because of its certainty, and because of its conformity to the views and traditions of our people, and, we may add, more in accordance with the various adjudications upon the subject in this State, and more in accord with the general legal and judicial current of thought. It is true, that, as said by Mr. Justice Metcalf, "it has repeatedly been said by this and other courts, that the terms 'domicil,' 'inhabitancy' and 'residence' have not precisely the same meaning." But it will be found upon examination that these three words are often used as substantially signifying the same thing.

In one of the earliest cases, *Harvard College v. Gore*, 5 Pick. 370, 377, Chief Justice Parker, in defining the word "inhabitant" as used in the laws, defined it as one which imported not only domicil, but something more than domicil. "It imports citizenship and municipal relations; whereas, a man may have a domicil in a country to which he is an alien, and where he has no political relations. . . . An inhabitant, by our Constitution and laws, is one who, being a citizen, dwells or has his home in some particular town, where he has municipal rights and duties, and is subject to particular burdens; and this habitancy may exist or continue

notwithstanding an actual residence in another town or another country." There are other passages in the same opinion which although used *alio intuitu*, yet clearly indicate the current of judicial thought. For example: "The term 'inhabitant' imports many privileges and duties which aliens cannot enjoy or be subject to," p. 373; "does not affix his domicile or habitancy," p. 372; "a pretended change of domicile to avoid his taxes," p. 378. There are other similar expressions running through the whole opinion.

In *Lyman v. Fiske*, 17 Pick. 231, the views of Chief Justice Parker in *Harvard College v. Gore* were considered by Chief Justice Shaw; and although expressing no dissent from the views of Chief Justice Parker, it is evident that in his apprehension the word "inhabitant" as used in the Constitution imported one domiciled, and he did not deem it important to consider whether it imported anything else in relation to political rights, duties and liabilities than the word "domiciled" would import. But as the views of that magistrate are never to be slightly regarded, and as he gave the opinion in both the cases decided by this court, cited by Mr. Justice Metcalf as settling that the words "domicil," "habitancy" and "residence" have not precisely the same meaning, we cite from his opinion to show what his views were of "domicil" and "habitancy": "In some respects perhaps there is a distinction between habitancy and domicile, as pointed out in the case of *Harvard College v. Gore*, 5 Pick. 377, the former being held to include citizenship and municipal relations. But this distinction is believed to be of no importance in the present case; because all the facts and circumstances, which would tend to fix the domicile, would alike tend to establish the habitancy. It is difficult to give an exact definition of 'habitancy.' In general terms, one may be designated as an inhabitant of that place which constitutes the principal seat of his residence, of his business, pursuits, connections, attachments, and of his political and municipal relations. It is manifest, therefore, that it embraces the fact of a residence at a place with the intent to regard it and make it his home. The act and intent must concur, and the intent may be inferred from declarations and conduct."

It is entirely clear that, in his opinion, so far as relates to municipal rights, privileges and duties, there is substantially no distinction between "domicil" and "habitancy." And, as further illustrating the views of that magistrate and the general sentiment of our people as to the use of such language in legislative enactments, we cite his language in *Abington v. North Bridgewater*, 23 Pick. 170, 176: "In the several provincial statutes of 1692, 1701 and 1767, upon this subject, the terms 'coming to sojourn or dwell,' 'being an inhabitant,' 'residing and continuing one's residence,' 'coming to reside and dwell,' are frequently and variously used, and we think they are used indiscriminately, and all mean the same thing, namely, to designate the place of a person's domicile. This is defined in the Constitution, c. 1, § 2, for another purpose, to be the place 'where one dwelleth or hath his home.'"

Authorities could be multiplied almost indefinitely in which it

has been held by this court that, so far as it relates to municipal rights, privileges, powers or duties, the word "inhabitant" is, with the exceptions before referred to, universally used as signifying precisely the same as one domiciled. See *Thorndike v. Boston*, 1 Met. 242, 245. *Sears v. Boston*, 1 Met. 250, 252. *Blanchard v. Stearns*, 5 Met. 298, 304. *Otis v. Boston*, 12 Cush. 44, 49. *Bulkley v. Williamstown*, 3 Gray, 493, 494.

As illustrative, however, of the fact that domicil and habitancy are, for the ordinary purposes of citizenship, such as voting, liability to taxation and the like, identical, and that when they are susceptible of different meanings they are used *alio intuitu*, we cite the language of Chief Justice Shaw in *Otis v. Boston*, 12 Cush. 44, 49: "Perhaps this question has heretofore been somewhat complicated, by going into the niceties and peculiarities of the law of domicil, taken in all its aspects; and there probably may be cases where the law of domicil, connected with the subject of allegiance, and affecting one's national character, in regard to amity, hostility and neutrality, is not applicable to this subject. But as a man is properly said to be an inhabitant where he dwelleth and hath his home, and is declared to be so by the Constitution, for the purpose of voting and being voted for; and as one dwelleth and hath his home, as the name imports, where he has his domicil, most of the rules of the law of domicil apply to the question, where one is an inhabitant."

A very strong case of retention of domicil, while *in itinere* to a new one which is subsequently reached, is *Shaw v. Shaw*, 98 Mass. 158, in which the court say that the rule of *Colton v. Longmeadow*, which merely followed *Briggs v. Rochester*, "is such an exception to the ordinary rule of construction as ought not to be extended."

Upon the whole, therefore, we can have no doubt that the word "inhabitant" as used in our statutes when referring to liability to taxation, by an overwhelming preponderance of authority, means "one domiciled." While there must be inherent difficulties in the decisiveness of proofs of domicil, the test itself is a certain one; and inasmuch as every person, by universal accord, must have a domicil, either of birth or acquired, and can have but one, in the present state of society it would seem that not only would less wrong be done, but less inconvenience would be experienced, by making domicil the test of liability to taxation, than by the attempt to fix some other necessarily more doubtful criterion.

Whether the cases of *Briggs v. Rochester* and *Colton v. Longmeadow* should be followed in cases presenting precisely similar circumstances, the case at bar does not require us to decide; and we reserve further expression of opinion on that question until it shall become necessary for actual adjudication. If they are to be deemed authority they should certainly be limited to the exact facts, where a person before leaving this Commonwealth, has fixed upon a place certain as his future home, and has determined to abandon this Commonwealth for the purpose of settling in his new home, and is, upon the 1st of May, without the Commonwealth, in good faith and with reasonable despatch actually upon his way to his new home. The plaintiff does not bring himself

within this rule; for although he might have left the Commonwealth with the fixed purpose to abandon it as a residence, he did not leave it on his way to a place certain which he had determined upon as his future residence, and was proceeding to with due despatch; and, upon the general rule that, having had a domicile in this Commonwealth, he remains an inhabitant for the purpose of taxation until he has acquired a new domicile, the intention and fact had not concurred at the time when this tax was assessed. The instructions of the presiding judge, therefore, inasmuch as they were not based upon the rules here laid down, were not accurately fitted to the facts of the case, and the *exceptions must be sustained*. 132 Mass. 89.

ESTATES OMITTED IN THE ANNUAL TAXATION.

Assessments of Taxes upon.

R. L., c. 12, § 85.

The tax authorized by Statutes of 1868, c. 320, as amended by the Statutes of 1873, c. 272 (Pub. Stats., c. 11, § 78) [R. L., c. 13, § 85], to be assessed upon the property of any person to a certain amount, and liable to taxation, discovered by the assessors, after their warrant has been committed to the collector, to have been omitted from the last annual assessment, is not a new tax, but an amendment of the annual assessment; and it is immaterial that a person, who has not furnished the assessors with a list of his taxable property, is not the actual owner of property so assessed to him. *Harwood v. North Brookfield*, 130 Mass. 561 (1881). See OMITTED ESTATES AND POLLS.

A tax upon the personal property of a person, who does not bring in a list to the assessors, as required by the Gen. Stats., c. 11, § 22 [R. L., c. 12, § 41], may be assessed on "personal property," without any enumeration of particular kinds or items of property, if the assessors are unable to ascertain such particulars; and an additional assessment upon personal property, discovered by the assessors to have been omitted from the last annual assessment, as authorized by the Stats. of 1868, c. 320, may be laid in the same manner. *Noyes v. Hale*, 137 Mass. 266.

Assessors of taxes cannot be said to "discover" that the property of a person liable to taxation has been omitted from the last annual assessment, within the meaning of the Stats. of 1868, c. 320, until they become satisfied as a board that there has been such omission; and private information of the omission obtained by one member of the board, before the tax list and warrant have been committed to the collector, is not sufficient. *Noyes v. Hale*, 137 Mass. 266.

The provision of the Stats. of 1868, c. 320, requiring that the additional tax therein authorized upon property discovered by the assessors to have been omitted from the last annual assessment, shall be entered in the tax list of the collector, may be complied with by entering the same in a separate book, or on a separate paper, with a new warrant for its collection. *Noyes v. Hale*, 137 Mass. 266.

An additional tax authorized by the Stats. of 1868, c. 320, upon property discovered by the assessors to have been omitted from the last annual assessment, is properly assessed to the owner of the property on the first day of May, although he has died between that day and the date of the new assessment, and not to his executor. *Noyes v. Hale*, 137 Mass. 266.

In an action for the amount of a tax assessed, under the Stats. of 1868, c. 320, upon property discovered by the assessors to have been omitted from the last annual assessment, a statement made by one assessor to his associates at a meeting of the board, of a private conversation between him and the executor of the deceased owner of the property, in relation to its valuation, is admissible in evidence; and evidence that the conversation was not stated truly is immaterial. *Noyes v. Hale*, 137 Mass. 266.

EVASION OF TAXATION.

R. L., c. 12, §§ 29-33.

See *Draper v. Hatfield*, 124 Mass. 53. *Thayer v. Boston*, 124 Mass. 132. *Wheeler v. Goulding*, 13 Gray, 539.

Great Barrington v. County Commissioners, 112 Mass. 218.

Assessors of taxes are not bound by a list of property brought in for assessment and sworn to, if it appears from an examination of the person who brings it in that it is not true. *Hall v. Middlesex*, 10 Allen, 100 (1865).

Under the Gen Stats., c. 11, § 25, now Pub. Stats., c. 11, § 40 [R. L., c. 12, § 46], after a person has seasonably filed a schedule purporting to be a true list of all his property liable to taxation, and has made oath to the same, the assessors have no right to add to such list other property for which they consider him taxable, and assess him thereon, without making any inquiries of him in relation thereto. *Moors v. Street Commissioners*, 134 Mass. 431.

See CORPORATIONS, *Returns of*; R. L., c. 12, § 92; ASSESSORS, *Duties of, etc.*; ASSOCIATIONS.

EXEMPTION FROM TAXATION.

R. L., c. 12, §§ 5-12.

As to shares in national banks. R. L., c. 14, §§ 9-18.

Shares in the guarantee capital or permanent funds acquired by mutual *marine*, mutual *fire and marine*, or mutual *fire* insurance companies organized under the provisions of our statutes, are taxable under the provisions of R. L., c. 14, and are therefore not taxable to holders by the local assessors.

R. L., c. 14, § 53.

Trust funds held by the New England Trust Company, and other trust companies chartered since 1871, except the Worcester Safe Deposit and Trust Company, and the Massachusetts Loan and Trust Company, are taxable under charter provisions similar to those of R. L., c. 14, and therefore exempt from local taxation.

As to taxation of such corporations chartered after May 28, 1888, see R. L., c. 14, §§ 35, 36, 38, 40, 54, 61, 63, c. 12, § 26.

As to real estate of the Commonwealth, sold by Commissioners of Public Lands, and agreements for deeds given, see R. L., c. 12, § 5, cl. 2.

A farm and the farming stock owned by an institution incorporated within this Commonwealth for the education of youth, and by it worked solely to raise produce and do team work for a boarding-house kept by the institution to supply board to the students at its actual cost, is exempted from taxation by the Gen. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3]; and it is immaterial that one-eighth of the farm which consists of waste and swampy land, and connects other parts which are cultivated and with which it was bought, is suffered to lie unused. *Wesleyan Academy v. Wilbraham*, 99 Mass. 599 (1868).

An institution organized under the Pub. Stats., c. 115 [now c. 125, R. L.], for the education of boys owned a large farm on which were the school buildings, two farm houses, barns and other buildings adapted for farm purposes and live stock. The scholars, in addition to attending school, were required to work on the farm two or three hours a day, and were taught agriculture. The price of board and tuition was \$100 a year for each scholar. The products of the farm and the live stock were for the most part consumed in furnishing food for the scholars, but others were sold or bartered and the proceeds applied to the maintenance of the school. *Held*, that, under the Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], the whole of the property of the institution was

exempt from taxation. *Mt. Hermon Boys' School v. Gill*, 145 Mass. 139.

And where the trustees of a lunatic hospital held an estate of one hundred and ten acres for the use of the hospital, part of which (consisting of arable land) was cultivated for the use of the institution, and a part (being salt marsh) remained unimproved, the court held

That the exemption was not limited to merely necessary grounds.

That the officers were the parties to decide what lands were reasonably required for the institution, and what use would promote its purposes; and that, in the absence of anything showing abuse, mere extent of grounds would not determine that their discretion was wrongly exercised. *Mass. Gen. Hospital v. Somerville*, 101 Mass. 319.

And where land had been purchased, but not actually put in use, for a hospital, it was held to be exempt from taxation.

SUPREME JUDICIAL COURT.

LAW — NOVEMBER, 1873.

NEW ENGLAND HOSPITAL *v.* CITY OF BOSTON.

Opinion of the Court.

GRAY, C.J. The facts agreed show that the plaintiffs, at the date of the assessment of this tax, had recently purchased the land in question for the purpose of establishing and maintaining a hospital thereon, and were diligently proceeding with the preliminary measures necessary to the erection of the same. The land must therefore be deemed to have been then occupied by them for the charitable purposes for which they were incorporated, and as such exempted from taxation by the Gen. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3]. Judgment for the plaintiffs. *New England Hospital v. City of Boston*, 113 Mass. 518.

Still further in this direction is the following case: —

SUPREME JUDICIAL COURT.

LAW — AUGUST 31, 1875.

TRINITY CHURCH *v.* CITY OF BOSTON.

GRAY, C.J., did not sit. MORTON, J., absent.

On and before May 1, 1873, the plaintiff, a religious corporation, duly established under the laws of this Commonwealth, owned a lot of land on St. James Avenue, in the city of Boston.

On May 1, 1873, the defendant caused certain taxes to be assessed upon the said lot, which taxes, amounting to \$2,313.27, were paid, under protest, to the treasurer of the city on Dec. 31st, 1873. The work of building a new house of worship on St. James Avenue, to replace the plaintiff's church on Summer Street, destroyed by the fire of Nov. 9, 1872, was begun on the lot, before the assessment was laid, by driving a part of the piles

for the foundation of the edifice; but no further progress has been made in the erection of the building, that being as far as the work could reasonably be advanced during the winter after the fire, and the work has been continued with all reasonable diligence ever since. It was then, and is now, the intention of the proprietors of the plaintiff corporation to use the lot on St. James Avenue for purposes of religious worship only; and they have caused the work of building the new church to be carried on with all reasonable diligence. All the land included in the assessment is necessary for the use of the church, and is intended for no other purpose. A tax was assessed, for the year 1873, on the lot on Summer Street on which the church stood previously to the fire; and it was paid, as that lot had been abandoned as a site for a house of religious worship.

The lot on St. James Avenue was purchased before the fire of Nov. 9, 1872; and, if the church on Summer Street had not been destroyed by that fire, the society would have worshipped in that edifice until the new one was completed, in which case the lot on Summer Street would not have been subject to taxation for the year 1873. The St. James Avenue lot is the only property belonging to the plaintiff claimed to be exempt from taxation under the Gen. Stats., c. 11, § 5, cl. 7 [R. L., c. 12, § 5, cl. 7].

COLT, J. The statutes, by which "houses of religious worship," "when owned by a religious society, or held in trust for the use of religious organizations," are exempted from taxation have been uniformly assumed or construed to exempt the land upon which such houses are erected. Gen. Stats., c. 11, § 5 [R. L., c. 12, § 5]. Stats. 1865, c. 206. *Lowell Meeting-house v. Lowell*, 1 Met. 538. The purpose of the statute is to relieve such organizations from the burden of taxation upon property devoted to public uses; and, as the land upon which the building stands is essential to the existence of the structure, it is fairly to be presumed that it was the intention of the Legislature to include it in the provisions of the statute, by the phrase "houses of religious worship."

It is not essential that the property thus exempt should be actually used, or should be in a condition to be actually used, for purposes of religious worship. Such a construction would exclude from the benefits of the statute all unfinished houses of worship, and all which, by accident or want of repair, had become temporarily unfit for use, or the use of which had for any reason been temporarily suspended.

The occupation for religious purposes, which the statute contemplates, does not require the actual completion of the structure. And such occupation continues, notwithstanding temporary interruptions in its use.

By a clause in the statute, which is part of the same sentence which secures this exemption, it is provided that "portions of such houses, appropriated for purposes other than religious worship, shall be taxed at the value thereof to the owners of the houses." And this would seem to imply that it is the appropriation of the property, or any part of it, to the sacred uses contemplated which secures the exemption.

It has been recently held in *New England Hospital v. Boston*, 113 Mass. 518, that land purchased by a charitable institution, where measures had been taken preliminary to commencing the erection of a hospital thereon, was occupied by the society for the purposes for which it was incorporated, and so was exempt from taxation under a clause which exempts such property when so occupied.

It is not necessary in this case to define at what stage in the erection of a building the property becomes a house of religious worship, or to say that land only may, under some circumstances, be exempt from taxation, although no building has been actually begun upon it. For a majority of the court are of opinion that real estate held by a religious society, not more than sufficient in extent to meet its reasonable requirements in this respect, and devoted by such society in good faith to the erection of a church edifice, upon which the work of erection already commenced is prosecuted without unreasonable delay, and being all the real estate which is so held, is entitled to the exemption given by the statute.

And this, upon the facts agreed, disposes of this case.
Judgment for the plaintiff. 118 Mass. 164.

The following case is of interest as to the rule of division where an estate is partly taxable and partly exempt:—

SUPREME JUDICIAL COURT.

LAW — JANUARY, 1874.

CITY OF CAMBRIDGE v. CO. COM'RS OF MIDDLESEX.

Opinion of the Court.

COLT, J. The upper stories of Holyoke House, a building owned by the President and Fellows of Harvard College, are appropriated to the students, and used for purposes within the college charter; they are therefore exempt from taxation. Gen. Stats., c. 11, § 5 [R. L., c. 12, § 5]. The lower story, which is used for other purposes, is not exempt. The question upon this petition for a *certiorari* is, whether the rule adopted by the assessors of Cambridge for ascertaining the taxable value of the last-named portion, was erroneously changed by the county commissioners on appeal to them by the college.

The valuation of the assessors was made by adding the value of the land to the value of the lower story, including the foundations as if there had been a building of only one story, the whole of which was subject to taxation.

But the county commissioners estimated the taxable value of the property at one-third of the value of the whole building, together with one-half of the value of the land, and ordered the city to remit a sum declared by them to be in excess of a just and fair assessment.

The building and land, it is said, must be treated, for the purpose of the valuation, as an organized whole. The upper stories

cannot exist without the land and foundations to support them. Some part of the value of the lower story must enter into the value of the upper stories, while the upper part of the building must in the same way be more or less important and valuable to the lower. To some extent the land and foundations are appropriated to college purposes, and their whole value cannot fairly or legally be annexed to the lower story of the building.

It was within the authority of the county commissioners to revise an assessment made upon a wrong principle; and it is not shown by the petitioners that any error was made in the rule adopted by them.

The principle upon which the apportionment was made is not stated. It may have been made according to the estimated ratable value of each part, or by some other rule equally just and equitable.

Their action is not open to revision upon the allegations in this petition. Petition dismissed with costs. *Cambridge v. County Commissioners of Middlesex*, 114 Mass. 337.

SUPREME JUDICIAL COURT.

LAW — APRIL, 1876.

TRUSTEES OF THE CHAPEL OF THE GOOD SHEPHERD *v.* CITY OF BOSTON.

Opinion of the Court.

GRAY, C.J. The plaintiff, by its charter, is "made a body corporate for religious and charitable purposes," and is empowered to "erect, hold, maintain and let lodging-houses within the city of Boston, upon such terms and conditions as it may determine, subject to the laws of the Commonwealth," as well as to "erect, hold and establish churches or chapels in said city for public religious worship," and to hold real and personal estate to the amount of \$200,000, "the whole income of which shall be devoted to religious and charitable uses." Stat. 1868, c. 114.

In order to exempt real estate belonging to a charitable institution from taxation, it is not enough that the income derived therefrom should (as all the income of the corporation, from whatever source derived, must) be applied to the purposes for which it was incorporated; but the real estate itself must be occupied by the corporation or its officers for those purposes. Gen. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3].

The chapel erected and held by the plaintiff was doubtless occupied by the corporation for a charitable and religious purpose, and is admitted to have been exempt from taxation; and lodging-houses let to poor tenants without compensation might fall within the same rule.

But the rooms let by the plaintiff to tenants, receiving the usual rate of rent, were clearly not occupied by the corporation or its officers for religious or charitable purposes, within the meaning of the tax act. *Lowell Meeting-house v. Lowell*, 1 Met. 538. *Pierce v. Cambridge*, 2 Cush. 611. The power conferred by the charter was broad enough to authorize the corporation to let rooms upon these terms. But it did not make the purpose of investment and profit, for which these rooms were improved and used, a charitable or religious purpose in any legal aspect.

As part, at least, of the plaintiff's real estate was not exempted from taxation, this action cannot be maintained. *Bourne v. Boston*, 2 Gray, 494. And, according to the terms of the case stated, there must be judgment for the defendant. *Chapel of Good Shepherd v. Boston*, 120 Mass. 212.

The professors and instructors in a college, although not members of the corporation, are "officers" of the college, within the meaning of Pub. Stats., c. 11, § 5, cl. 3, as amended by Stat. 1889, c. 465 [R. L., c. 12, § 5, cls. 3 and 5], exempting from taxation the real estate belonging to literary institutions "occupied by them or their officers for the purposes for which they were incorporated." *Williams College v. Williamstown*, 167 Mass., page 505.

Lands with dwelling-houses thereon, owned by a college and occupied as residences by persons engaged solely in the instruction or government of the college or in the care of its property, under parol agreements whereby each is to receive as salary a stated sum monthly, and the use of the estate while in the service of the college, for which use a certain sum is deducted from the amount of the salary, are not exempt from taxation under Pub. Stats., c. 11, § 5, cl. 3, as amended by Stat. 1889, c. 465 [R. L., c. 12, § 5, cls. 3 and 5]. The same.

The following decision is of importance, as showing the construction to be placed upon the limit of real estate allowed to be held exempt from taxation under special charter:—

An assessment by the aldermen of Boston upon land of Harvard College, under the Statutes of 1866, c. 174, and 1868, c. 276, of a part of the expense of altering a street, proportional to the benefit received by the assessed land from the alteration, is a "civil imposition" within the meaning of that term in the clause of the college charter of 1650, exempting from all civil impositions, taxes and rates, lands of the college not exceeding a certain annual value; and if, at the time when the land was acquired by the college, before the adoption of the Constitution of the Commonwealth, it was within the limit of the exemption, and continued within it until and at the time when the Constitution was adopted, the college is entitled to continue to hold it exempted, notwithstanding that its annual value now greatly exceeds the limit, and that the college holds other lands, also exceeding the limit in value, aside from lands exempted under the general tax acts. *Harvard College v. Boston*, 104 Mass. 622 (1870).

As to the exemption of cemeteries and rights of burial:

SUPREME JUDICIAL COURT.

LAW — SEPTEMBER 10, 1875.

WOODLAWN CEMETERY *v.* INHABITANTS OF EVERETT.

AMES and ENDICOTT, J.J., absent.

Under the statutes of the Commonwealth, land is not "dedicated for" a cemetery, or for the burial of the dead, so as to be exempt from taxation, or "used or appropriated" to the purpose of a burial-ground so as to entitle the owner to use it for that purpose for the future without municipal permission, until it has been devoted or set apart, and some active measures taken toward preparing the ground for that purpose.

In 1850 a parcel of land was conveyed to a cemetery corporation organized under the Stat. of 1841, c. 114, and the corporation voted to appropriate it to the purposes of a cemetery or burial-place of the dead. In 1858 the vendor foreclosed a mortgage given by the corporation, and took possession of the land. In 1868 another cemetery corporation voted to purchase the land for the purposes of its cemetery, and applied to the town in which the land lay for permission to use the land for burial purposes. The town refused to grant permission. The corporation then bought the land, and gave notice to the town that it was dedicated to the uses and purposes of a cemetery, and passed a vote that it was so dedicated. A house on the land was used by the gardener of the corporation, a hot-house for propagating plants for the cemetery was built thereon, and the land was used to pile manure, grave-markers, stone posts, wood and lumber for the cemetery, and for cutting sods for lots therein; but no part of the land was ever used for burials, or laid out into lots or permanent avenues, and no attempt was made to sell any part of it for burial purposes. *Held*, in an action to recover back a public tax levied on the land in 1870, that the land had not been so "dedicated for the burial of the dead," within the Gen. Stats., c. 11, § 5, cl. 8, as to be exempt from taxation.

The provisions of the Stat. of 1855, c. 257, §§ 2, 3, and of the Gen. Stats., c. 28, § 5, that no land, except that already so used and appropriated, shall be used for burial purposes other than private tombs, unless by permission of the town, or of the mayor or aldermen of the city in which the same is situated, are constitutional, and under the Rev. Stats., c. 2, § 6, cl. 13, and the Gen. Stats., c. 3, § 7, cl. 13, extend to corporations for burial purposes, whose charters do not exempt them from the control of the Legislature in the exercise of its police power for the security of the public health and comfort.

Under an article in a warrant for a town meeting "to see what action the town will take relative to collecting the tax on" certain land, "and pass any votes on the subject that may be deemed proper," the town voted to refer the subject matter of the article to the selectmen with full powers.

Held, That the selectmen had no authority, in consideration of the tax being paid, to grant the owner of the land permission to use the land for burial purposes.

GRAY, C.J. By the Rev. Stats., c. 7, § 5, cl. 5, "all tombs and rights of burial" were exempted from taxation. The Stat. of 1841, c. 114, authorizing ten or more persons to organize themselves as a corporation for the purpose of procuring, establishing and preparing a burial-place for the dead, provided in § 7, that "the real estate of such cemeteries or burial-places shall be exempt from public taxes, so long as the same shall remain dedicated for the purpose of a cemetery or burial-place for the dead."

By § 1 of Stat. 1855, c. 237 (which was passed and took effect on April 27, 1855), the Woodlawn Cemetery is declared to be such a corporation; and by § 4 the provision of the Stat. of 1841, c. 114, § 7, above quoted, "shall apply to all the shares, property and effects of said corporation, so long as its real estate shall remain dedicated to the uses and purposes of a cemetery or burial-place for the dead."

By the Stat. of 1855, c. 257 (passed three days later), § 3, "no land other than that now used or appropriated in any town in this Commonwealth for the purpose of a burial ground shall be used by any person or persons for the burial of the dead, unless permission is granted by the town." Section 2 contains a similar provision as to cities. And by § 10 nothing in this act shall prevent inhabitants of any town from using or erecting a tomb on their own land for the exclusive use of their own family.

These provisions are substantially re-enacted in the General Statutes. By c. 11, § 5, cl. 8 [R. L., c. 12, § 5, cl. 8], "cemeteries, tombs and rights of burial, as long as the same shall be dedicated for the burial of the dead," are exempted from taxation. And by c. 28, § 5, "except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town, or of the mayor and aldermen of the city in which the same is situated."

No land can be deemed to be "dedicated" for the purposes of a cemetery or burial-place for the dead, so as to be exempt from taxation, or "used or appropriated" for the purpose of a burial-ground, so as to entitle the owner to use it for that purpose for the future without municipal permission, which has not been devoted or set apart, and some active measures taken toward preparing the ground for a burial-place. A mere dedication or appropriation on paper is not enough.

It appears by the facts agreed, that, at the time of the passage of the Stat. of 1855, c. 257, the Mount Lebanon Cemetery, which had purchased the Corbett farm, and given a mortgage back to the vendor to secure the payment of part of the purchase money, had merely voted to appropriate the same to the purposes of a cemetery or burial-place, and had not in fact so appropriated it, nor done any act upon the land toward such appropriation. At the time of the passage of the General Statutes, the vendor held the land, under a foreclosure of his mortgage for a breach of condition unaffected by any appropriation or intention to appropriate it to the purposes of a cemetery.

The Woodlawn Cemetery, the present plaintiff, acquired its title to the farm eight years afterwards. But even if the plaintiff could avail itself of the previous holding of a farm by the Mount Lebanon Cemetery, the facts show that it has never been actually used or appropriated for a burial-ground within the meaning of the statutes.

It is expressly agreed in the case stated, that no part of this land has been used for burials, or divided off or laid out into lots or permanent avenues, and that no attempt has been made to sell it for purposes of burial. The use of a parcel of land for growing trees or shrubs, cutting turf, and depositing stone, wood and other materials, to be ultimately used in preparing and ornamenting a cemetery, is no dedication of such land itself for the purposes of a cemetery or burial-place for the dead.

The cases cited by the learned counsel for the plaintiff are quite distinguishable from this. Those of *Wesleyan Academy v. Wilbraham*, 99 Mass. 599, and *Massachusetts General Hospital v. Somerville*, 101 Mass. 319, arose under the broader clause of the tax act, Gen. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], which exempts all real estate occupied by charitable institutions "for the purpose for which they were incorporated"; and in each case the lands held to be exempted were occupied by such an institution for the purposes specified in its charter. The extent of the decision in *Balch v. County Commissioners*, 103 Mass. 106, was, that it was no objection to the validity of an order of the county commissioners, under the Statutes of 1866, c. 112, authorizing land to be taken for the enlargement of a burial-ground, that part of the land taken was to be used for a passage way from the burial-ground to a public street.

The charter of the plaintiff corporation did not exempt lands held by it for burial purposes from the control of the Legislature in the exercise of its police power for the security of the public health and comfort. *Brick Presbyterian Church v. New York*, 5 Cowen, 538. *Coates v. New York*, 7 Cowen, 585. *Sohier v. Trinity Church*, 109 Mass. 1, 21. *Commonwealth v. Intoxicating Liquors*, 115 Mass. 123. The provisions of the Stat. of 1855, c. 257, §§ 2, 3, and Gen. Stats., c. 28, § 5, are a reasonable and lawful exercise of the power of the Legislature. Although the former speaks only of lands "used by any person or persons," yet those words by the Rev. Stats., c. 2, § 6, cl. 13, and the Gen. Stats., c. 3, § 7, cl. 13, may, and in this case must, extend to corporations, in order to give them reasonable effect; for, at the time of their passage, very few, if any, lands in this Commonwealth were held by individuals for burial purposes other than private tombs, which are expressly excepted.

The article in the warrant under which the town meeting in 1869 was held was limited to the collection of the tax already assessed on the Corbett farm, and did not include any question of granting permission to use it for the purpose of burial. The permission granted by the committee appointed at that meeting to the plaintiff to use the land for that purpose was therefore unauthorized and of no legal effect. Even a permission from the town so to use the land would not exempt it from future taxation

until it had been actually dedicated to the purposes of a burial-place.

The Corbett farm, not having been so dedicated, is not exempt from taxation under the statutes of the Commonwealth. *Judgment for the defendant. Woodlawn Cemetery v. Everett*, 118 Mass. 354.

The amount of real and personal estate, in addition to the meeting-house, which may be held by a religious society, is limited to so much as is necessary for its objects and no more. Pub. Stats., c. 38, § 28 [R. L., c. 36, § 25].

The real estate belonging to such institutions as are mentioned in the third division of section 5 of chapter 12 of the Revised Laws, purchased with a view of removal thereto, shall not be exempt from taxation for a longer period than two years until such removal takes place. R. L., § 5, cl. 3.

No taxes shall be assessed in any city or town for State, county or town purposes upon the shares in the capital stock of certain corporations, etc., mentioned in section 62, chapter 14 of the Revised Laws, for any year for which they pay the tax on their corporate franchise or property.

Land purchased in fee or otherwise taken by a city by authority of the Legislature for the purpose of supplying the city with pure water, and used for that purpose only, is justly taken in the exercise of the right of eminent domain, and is therefore not liable to taxation. *Wayland v. County Commissioners*, 4 Gray, 500.

Citizens of this Commonwealth are not taxable here for shares of stock owned by them in national banking associations which are located in other States. See the following decision:—

The United States statute of 1864, c. 106, § 41, makes unlawful the imposing by, or by the authority of, a State of a tax on shares owned by an inhabitant thereof in the capital stock of a national banking association organized under that statute and located in another State. *Flint v. Boston*, 99 Mass. 141 (1868).

The personal estate of an unmarried woman is liable to taxation in this Commonwealth, although, by the Constitution, women are not allowed to vote. *Wheeler v. Wall*, 6 Allen, 558 (1863).

An accumulating fund held in trust for the future benefit of an incorporated educational institution is, by force of the Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], exempt from taxation. *Williston Seminary v. County Commissioners*, 147 Mass. 427.

Real estate, which a corporation organized for the education and religious instruction of children owns and permits to be used as purely incidental to the management of a parochial school situated on another's adjoining property, and entirely controlled and supported by others than itself, is not exempt from taxation

under the Pub. Stat., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3]. *St. James Educational Institute v. Salem*, 153 Mass. 185.

The keeping of a dormitory and boarding-house for students of the Massachusetts Institute of Technology by a literary or scientific corporation, other than the institute itself, is not an educational purpose within the meaning of Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], exempting from taxation the property of such a corporation used for an educational purpose. And if some literary or scientific work is done in the building, this does not change the result, if the dominant use of the building is for a dormitory or boarding house. *Phi Beta Epsilon Corp. v. Boston*, 182 Mass. 457.

Under R. L., c. 12, § 5, cl. 3, real estate of the trustees of Milton Academy used for dwelling houses of teachers of the academy with their families, as an aid in preserving discipline and in bringing about closer relations with the pupils, the use being allowed as part of the compensation of the teachers, properly can be found to be occupied for the purposes for which the institution was incorporated, and therefore to be exempt from taxation; so can land used for a baseball field and a football field with spaces for spectators, and so can unimproved swampy and thinly wooded land used for recreation by the pupils of the academy. *Emerson v. Milton Academy*, 185 Mass. 414.

Under R. L., c. 12, § 5, cl. 3, the exemption of the real estate of a literary institution from taxation does not exempt real estate used to produce income to be expended for the purposes of the institution, but does exempt real estate used for one of the purposes for which the corporation was established; and if this is the dominant purpose, it is immaterial that there may be incidental results of the use which would not entitle the property to exemption. The dominant purpose of the managing officers of the corporation, so long as they act in good faith and not unreasonably in determining how to use its real estate, will be given effect by the courts. *Emerson v. Milton Academy*, 185 Mass. 414.

A corporation organized under Pub. Stats., c. 115, "to provide a home for working girls at moderate cost," having no capital stock, and none of the income or profits of its business being divided among its members, can be found to be a charitable institution within the meaning of R. L., c. 12, § 5, cl. 3, and its property therefore to be exempt from taxation under that clause. *Franklin Square House v. Boston*, 188 Mass. 409.

Under R. L., c. 12, § 5, cl. 3, parcels of real estate belonging to a college, consisting of a house used as the residence of the president of the college, and also for his official entertaining and for meeting members of the faculty, students and others who wish to see him on business; another house used as the residence of the professor of astronomy, and also for astronomical work and to some extent for hearing classes in astronomy; a grove open to the public as a park, and used as a place of recreation by such students of the college as wish to walk, stroll or saunter there; a field used for outdoor sports, especially at times when a larger athletic field belonging to the college is not available;

and a triangular lot given to the college to make a suitable approach to the larger athletic field,— are occupied for the purposes for which the college was incorporated within the meaning of the statute, and consequently are exempt from taxation. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

A house assessed at \$800 and a barn assessed at \$300, standing on land assessed at \$700 and situated a short distance in the rear of the official house of a president of a college, without any fence or other indication of boundary between the two properties, built for a servant of a former president who was a janitor of the college while he lived in the house, the house being let to a person not in the employ of the college at a rent of \$35 a quarter, and the barn being used by the president of the college for storage purposes, are not occupied by the college or its officers for the purposes for which the college was incorporated, within the meaning of R. L., c. 12, § 5, cl. 3, and consequently are not exempt from taxation. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

Under R. L., c. 12, § 5, cl. 2, land of the Commonwealth, for which the Commonwealth has given a bond for a deed, in possession of the obligee who will become entitled to a deed on payment of the purchase money and who has erected buildings upon the land and is carrying on business there, is exempt from taxation. *Corcoran v. Boston*, 185 Mass. 325.

Stat. 1904, c. 385, providing that lands of the Commonwealth in that part of Boston called South Boston known as the Commonwealth flats "shall, if leased for business purposes, be taxed by the city of Boston to the lessees thereof," does not apply to land occupied under a bond for a deed from the Commonwealth by one who carries on business there, and such land is exempt from taxation. *Corcoran v. Boston*, 193 Mass. 586.

The provisions of Stat. 1857, c. 154, § 2, that the Evangelical Benevolent and Missionary Society incorporated by that chapter "may hold real and personal estate to the amount of three hundred and fifty thousand dollars, which property, and the net income thereof after the same has been paid for, shall be appropriated exclusively for the purposes in this act specified, and the same shall be exempted from taxation," exempts from taxation the property of that corporation only to the amount named, and does not operate as a specific exemption from taxation of the first property acquired by the corporation which consisted of real estate worth at the time of its acquisition less than \$350,000. *Hardy v. Waltham*, 7 Pick. 108, and *Harvard College v. Boston*, 104 Mass. 470, distinguished. *Evangelical Baptist, etc., Society v. Boston*, 192 Mass. 412.

A cemetery corporation was authorized by its act of incorporation to devote a limited tract of land, which was thereby exempted from taxation, to a rural cemetery, and to erect thereon a dwelling house with suitable appendages. Afterwards it bought other land on the opposite side of a highway, upon which stood a dwelling occupied rent free by its superintendent, whose salary included this privilege, and two small barns for the horse, carts,

and tools used in caring for the cemetery grounds. Subsequently a special act authorized the corporation to take and hold property by purchase or otherwise, any limitation in the original act notwithstanding, to be devoted "exclusively to the purposes connected with and appropriate to the objects of the corporation." *Held*, that by the latter act the purchase theretofore made was confirmed, and the exemption from taxation extended to the land so purchased. *Rural Cemetery v. County Commissioners*, 152 Mass. 408.

An association, organized under Pub. Stats., c. 115 [R. L., c. 125], for "the promotion of temperance, mutual relief, assistance, and culture, and charity and benevolence," whose principal income is derived from a fixed, regular compulsory contribution from its members which is to constitute a fund to be used exclusively for the benefit of the members, is not either a "benevolent" or a "charitable" society, within the meaning of Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cls. 3 and 5], as amended by Stat. 1889, c. 465, exempting, under certain conditions, the property of such a society from taxation. *Young Men's Protestant. etc., Society v. Fall River*, 160 Mass. 409.

Where the paramount object of a corporation, organized under Pub. Stats., c. 115 [now R. L., c. 125], is the dissemination of theosophical ideas and the procuring of converts thereto, and everything else is subordinate, on an appeal to the Superior Court from the decision of the board of assessors, under Stat. 1890, c. 127, refusing an abatement of the petitioner's taxes, the finding of the judge that the petitioner is not a literary, benevolent, charitable or scientific institution within the meaning of the Pub. Stats., c. 11, § 5, cl. 3 [now c. 12, R. L., § 5, cl. 3], as amended by the Stat. of 1889, c. 465, will not be disturbed. *New Theosophical Corp. v. Boston*, 172 Mass. 60.

At the trial of a petition for the abatement of a tax upon the house of the president of a college, upon the ground that it was exempt by Pub. Stats., c. 11, § 5, cl. 3 [now c. 12, R. L., § 5, cl. 3], it appeared that before he occupied the house it had been let for a school, that he lived in it with his family, paid rent to the college and water rates, established a tennis court at his own expense, and some years at least paid for the care of the grounds, and that he paid the inside expenses. He might be found to have exercised the same control over it that he did over another house which he previously had hired. *Held*, that it could not be said, as matter of law, that the house was exempt. *Amherst College v. Assessors of Amherst*, 173 Mass. 232.

In 1892 B. gave property in trust, the principal at the time of his decease to "be applied by my trustees to such charitable purposes as shall be determined by a board to be called the Board of the R. Fund, which I desire to consist of at least seven members." The deed then named certain persons as the original members of the board, and proceeded, "My wish is that they shall either apply the fund in whole or part to some charitable object, such as a trade or industrial school, or other charitable purpose they may think preferable, or shall apply the income from time to time for

charity or in aid of charitable institutions in such way as they deem best;" and they were authorized to transfer the fund to any corporation "organized for like charitable purposes to those they wish to carry out, and in such case the board may dissolve or continue itself as a board of visitors." And they were also authorized either to transfer the fund to the board, or to administer it "with all the powers herein given as the board may deem best." The settlor died on March 14, 1897. Those named in the deed as members of the board, with one exception, accepted the trust.

In April, 1897, the members of the board were incorporated, the certificate stating the purpose to be that "of administering . . . the fund created by the deed of B. . . for the charitable purposes by him thereby directed." After receiving the fund, the corporation paid it out to institutions incorporated for charitable purposes, some of which were within and others without the Commonwealth. *Held*, that the R. corporation was a charitable institution within the meaning of Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], which exempts charitable institutions from taxation; that no part of the fund was subject to a tax under the Stats. of 1891, c. 425, imposing a tax on collateral legacies and successions; and that it was immaterial that a portion of the fund was given to charitable institutions without the Commonwealth. *Balch v. Shaw*, 174 Mass. 144.

The occupancy contemplated by Pub. Stats., c. 11, § 5, cl. 3, as amended by Stat. 1889, c. 465 [now R. L., c. 12, § 5, cl. 3], exempting from taxation the real estate belonging to literary institutions "occupied by them or their officers for the purposes for which they were incorporated," means something more than that which results from ownership and possession on the part of the institution, or the use of the property for investment purposes. It must have, or be supposed to have, direct reference to the purposes for which the institution was incorporated, and must tend, or be supposed to tend, directly to promote them. *Phillips Academy v. Andover*, 175 Mass. 118.

Real estate owned and provided by a college without rent or compensation, or a lease or any agreement for a fixed term for the use of students who club together for the purpose of obtaining, with the assistance of the college, food at cost, also the estate occupied by the president of the college, who pays no rent or other compensation for its use and has no lease of it, and the estate occupied by professors, all of which are kept in order and repair at the expense of the college, most of the lower portions of the houses being used for meetings, and exercises connected with the college, and for different purposes incident to the offices and duties of the occupants, and the other portions being used by them and their families as dwellings, the salaries of the professors being fixed at certain sums "and the use of the house" at a sum stated, are all exempt from taxation. Pub. Stats., c. 11, § 5, cl. 3, as amended by Stat. 1889, c. 465 [now c. 12, R. L., § 5, cl. 3]. *Harvard College v. Cambridge*, 175 Mass. 145.

Real estate, occupied by a charitable institution for the purpose

for which it was incorporated but owned by a third person, is not exempt from taxation. *Bates v. Sharon*, 175 Mass. 293.

Under Pub. Stats., c. 11, § 5, cl. 7 [now R. L., c. 12, § 5, cl. 7], exempting from taxation "houses of religious worship owned by a religious society," land purchased by a religious society for the erection of a church thereon for which plans have been prepared is not exempt from taxation until the construction of the church has begun. *All Saints' Parish v. Brookline*, 178 Mass. 404.

A religious society purchased a lot of land containing 40,955 square feet on the corner of a suburban avenue, for the construction of a large stone church thereon, for which plans had been prepared. On account of insufficient funds, the construction of the stone church was not begun for more than two years thereafter, but upon one side of its intended site a small wooden church was built and used for worship, which on the completion of the stone church was to be removed to the corner of the lot to be used for a Sunday school. The assessors of the town, in the two years before the beginning of the construction of the stone church, assessed a tax on twenty thousand square feet of the lot, exempting from taxation the wooden church building and the remainder of the land, not designating by any line of division the land assessed and the land exempted. There was no fence on the premises except that enclosing the whole as one lot. *Held*, in an action by the society against the town to recover back the taxes assessed as above and paid under protest, that the burden was on the plaintiff to show that the whole lot was exempt from taxation, as, if any part of it was taxable, the plaintiff's remedy was by application for an abatement; and that there was no error in assessing the tax upon the portion of the lot which was intended for the erection of the stone church, there being no house of religious worship nor any part of such a house upon it, and it not being shown that the whole lot was needed for the small wooden church or that it was used as a reasonably necessary or proper incident to the maintenance and use of that church. *Barker, J.*, dissenting, on the ground that the whole lot from the date of its purchase by the parish had been dedicated to public worship, and that the immediate erection and continued use of a temporary wooden church, and the prosecution with all reasonable promptness of the work of building a permanent church, were the same in legal effect as if the stone church had been begun when the wooden one was. *All Saints' Parish v. Brookline*, 178 Mass. 404.

Land purchased by a city within the limits of another city for the purpose of obtaining therefrom gravel for the construction and repair of streets in the city so purchasing, and thereafter used for that purpose, is appropriated to a public use and is exempt from taxation. *Somerville v. Waltham*, 170 Mass. 160.

Stat. 1893, c. 352, § 1 [R. L., c. 12, § 10], provides that a city or town holding property, taken by purchase or otherwise, for the purposes of its water supply, in another city or town, shall not pay any tax on such property, but shall make to the town

where the property is situated the payments therein described; "*provided, however*, that any land or building from which any revenue in the nature of rent is received from any person occupying or using the same shall be subject to taxation." Under authority given by Stat. 1892, c. 60, § 4, the city of Fitchburg bought Wyman's reservoir in Westminster, with all the rights of Wyman in the pond and reservoir. The money paid for it was charged by the city to its water loan account. The city proceeded to construct a reservoir occupying substantially the same position as Wyman's reservoir, and a dam and gatehouse. The city's principal sources of water supply, authorized by sections 1 and 2 of the last-named act, were Wachusett Lake in Princeton and Meeting-house Pond in Westminster, — great ponds whose natural outlets flow through Wyman's reservoir and thence into a branch of the Nashua River which runs through Fitchburg. In 1895 the city made an agreement with the owners of mills on the branch of the Nashua River flowing through the city, by which, in consideration of the release of damages on the part of the mill owners, the city agreed to maintain Wyman's reservoir for the use of such owners, and to allow the water to flow only into the natural channel of the Nashua River, except in case of a serious conflagration or in case of a break in the pipes above Wyman's reservoir. In such case the city reserved the right to withdraw the waters of the reservoir into the pipes which supply the city with water, and also reserved the right to withdraw the waters of the reservoir, when necessary, for the purpose of repairing the pipes laid upon the bottom of it. Wyman's dam and gatehouse were necessary in order to turn the waters of Wyman's reservoir into the distributing pipes, and would always be necessary, if it were desired to utilize the waters of Wyman's reservoir for distribution to the inhabitants of the city; but the dam at Wyman's reservoir was not necessary in order to store the water of Meeting-house Pond or Wachusett Lake for distribution to the inhabitants nor to aid in its distribution, and was built at a lower level than the point at which the water for the city was admitted to the distributing pipes at the distributing basin then in use, called Smith's basin.

In 1899 the property of the city of Fitchburg at Wyman's reservoir was assessed by the town of Westminster as "dam and land flowed," and the collectors sued the city for the tax. It was agreed that the city did not receive any revenue in the nature of rent or otherwise for the use of the dam or gatehouse or the waters or land of Wyman's reservoir, except such rights or benefits, if any, as accrued to it under the mill owners' agreement. *Held*, that the land and dam were purchased by the defendant "for the purposes of its water supply," and that the exemption from taxation in Stat. 1893, c. 352 [R. L., c. 12, § 10] applied to it, and on the facts it could not be said that the defendant received any "revenue in the nature of rent" from any person occupying or using the property, therefore, that the action under Pub. Stats., c. 11 [R. L., c. 12, § 10], could not be maintained. *Miller v. Fitchburg*, 180 Mass. 32.

The following opinion of the Attorney-General lays down a rule for the exemption of "farming utensils," under the provisions of R. L., c. 12, § 5, cl. 11:—

Taxation — Exemption — "Farming Utensils" — Person.

Under the provisions of R. L., c. 12, § 5, cl. 11, exempting from taxation, among other specified articles of property, the "farming utensils of every person," such exemption should in general be confined to implements, tools and utensils used by any person in the pursuit of agriculture.

As used in such statute, the word "person" does not include a corporation.

SEPT. 28, 1906.

Hon. WILLIAM D. T. TREFRY, *Tax Commissioner.*

DEAR SIR:—Replying to your request for an opinion as to exemption from taxation by local assessors of farming utensils of every person, under R. L., c. 12, § 5, cl. 11, a list of articles which have in some instances been construed as exempt having been furnished me, I am of opinion that you should adopt a somewhat arbitrary rule. In my opinion, the following would be exempt:—

All hand tools for farming.
Plow, including "riding plow."

Harrow.

Cultivator.

Planter, geared and otherwise.

Mowing machine.

Tedder.

Horse rake.

Reaper, including reaper and binder.

Potato digger.

Ensilage cutter.

Spray pump, also tank.

Churn.

Wagon, where used principally for farm purposes.

Cart, where used principally for farm purposes.

Sled, where used principally for farm purposes.

Chains.

Manure spreader.

Upon the other hand, the following would not be exempt:—

Windmill, including pump.

Boiler (steam), also cooker.

Engine (steam), (gas), (portable), (stationary), (traction).

Power saw (for fire wood).

Fruit evaporator.

Cider mill and press.

Incubator.

Cream separator.

Cream cooler.

Honey extractor (centrifugal).

Carriage.

Wagon (other than farm wagon).

Cart (other than farm cart).

Sled (other than farm sled).

Sleigh.

Pung.

Harness (blankets, whips, robes).

I am of opinion that the word "person" as used in this statute does not include a corporation.

I find several decisions which hold that a wagon is a farm utensil; also, under 20 Kan. 555, that a McCormick Advance reaper and mower is a farming utensil.

It is difficult to define what would or would not be exempt, on principle; but it would seem that exemptions should be confined to the farming utensils, meaning all those implements, tools and utensils used in the pursuit of agriculture and husbandry.

Very truly yours,

DANA MALONE, *Attorney-General.*

FIRE DISTRICTS.

See DISTRICT TAXES.

HIGHWAYS.

Highway Tax Modified.

All laws which direct and authorize towns to vote sums for the repairs of highways and town ways, to be paid in labor and materials, and which provide for the assessment and collection thereof, are repealed.

Towns shall grant and vote such sums of money as are necessary for making and repairing highways and town ways, and such money shall be carefully and judiciously expended in making and repairing said ways by the road commissioners or by the surveyors of highways, each in his own district, when the town is divided into highway districts, and in such cases under the direction of the selectmen. Pub. Stats., c. 52, § 3 [R. L., c. 51, § 3, c. 25, §§ 76 and 78]. See *Westhampton v. Searle*, 127 Mass. 502.

HOUSES OF PUBLIC WORSHIP.

See RELIGIOUS SOCIETIES.

INCOMES.

How far Taxable.

Section four of chapter twelve of the Revised Laws provides that the income subject to taxation shall be only so much as exceeds two thousand dollars, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed.

A case in the Supreme Court involving the question of taxation of income in part derived from stock in trade used in business and taxed, has been recently decided; and the opinion is here given in full:—

Opinion of the Court.

AMES, J. The petitioner's complaint of the manner in which he has been taxed in the town of Medford, where he resides, is based entirely on the assumption that the income which he derives from his business as a member of the firm is derived from their "stock in trade," legally taxable and actually taxed in the city of Boston. On that ground he claims that the tax upon his income is assessed in violation of that clause of the statute which provides that "no income shall be taxed which is derived from property subject to taxation." Gen. Stats., c. 11, § 4 [R. L., c. 12, § 4].

But it appears to us that the assumption on which the petitioner's case depends is a fallacy. The income from a profession, trade or employment, which is taxable under our system of laws, is an entirely different thing from the capital invested in the business or the stock of goods, in the purchase of which the whole or part of such capital may have been expended. The income meant by the statute is the income for the year, and is the result of a year's business. It is the net result of many combined influences,—the use of the capital invested, the personal labor and services of the members of the firm, the skill and ability with which they lay in or from time to time renew their stock, the carefulness and good judgment with which they sell and give credit, and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry and skill. The stock of goods that happened to be in the possession of the firm on the first day of May might be, and it is perfectly fair to assume would be, in the ordinary course of business, for the most part sold out and replaced by another stock; and in the course of the year this operation might be many times repeated. The income to which the statute refers does not mean merely the profits derived from the sale of the goods that happened to be on hand at the date of the tax, but the profits derived from the dealings and business of the firm

for the year. It would not relieve the petitioner from any part of his tax, though it should be found that the goods on hand at the date of the tax had yielded no profit whatever, and had contributed absolutely nothing towards making up the sum which he reported to the assessors as his income from that business. It certainly is among possibilities that the business for the first part of the year may have been conducted, and the entire stock on hand on the first day of May may have been sold, at a loss, and yet that a favorable change in the markets at a later period may have overbalanced this loss, and made the result of the whole year a profitable one. And, even if it could be said that the "stock" of the firm taxable in Boston is meant by the statute to include the whole amount of the capital invested in its business, yet the profits of the business depend upon many elements, and are affected by many causes other than the mere use of capital. The tax which has been assessed upon the petitioner is not for an income derived from specific goods or merchandise, but for an income derived from the business of dealing commercially, in the like goods and merchandise, with such a degree of skill, judgment and good fortune that his share of the year's profits amounts to the sum which he returned as his income from business. We cannot doubt that this tax is allowed and justified by the laws of the State; and we see no reason for holding that the petitioner has been overtaxed.

Petition dismissed with costs. *Wilcox v. County Commissioners of Middlesex*, 103 Mass. 544 (1870).

The corporation counsel of the city of Boston has recently given an opinion on the taxation of incomes under R. L., c. 12, § 4, which I have thought it advisable to copy for the consideration of assessors.

The assessors of Boston have changed their practice in this regard in conformity with this opinion.

APRIL 16, 1890.

To the Honorable the Board of Assessors:

GENTLEMEN:—In reply to your letter of the 14th inst., in which you submit the following questions:—

1. Are the assessors justified in allowing legal interest on capital invested, as the income of that capital; and in exempting its amount from assessment, as income derived from property subject to taxation?

2. Can the assessors legally allow a remission of the income tax upon taxable income, when the amount of such income has, during the twelve months preceding the first day of May, been invested in property which is taxable on that day, to the person to whom it has accrued?—I have to say:—

It is your duty, I think under the law, as construed and stated by the Supreme Judicial Court in the case of *Wilcox v. County Commissioners*, 103 Mass. 544, to assess a tax upon a merchant's

or trader's income as well as upon the value of his stock, on or by which he is enabled (with his skill, etc.) to obtain such income, notwithstanding the provision of the statute that "no income shall be taxed which is derived from property subject to taxation." Pub. Stats., c. 11, § 4 [R. L., c. 12, § 4]. "The income," said the court, in said case, "from a profession, trade, or employment, which is taxable under our system of laws, is an entirely different thing from the capital invested in the business, or the stock of goods, in the purchase of which the whole or a part of such capital may have been expended." "The income meant by the statute is the income for the year, and is the result of the year's business. It is the net result of many combined influences; the use of the capital invested; the personal labor and services of the members of the firm; the skill and ability with which they lay in or from time to time renew their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry and skill."

I understand it to have been the practice of your board to deduct from the whole of such an income (in addition of course to the \$2,000) a sum which, in the opinion of the board, represents or is equal to the part of said income which is attributable to the stock itself, independently of, or separate from, the "skill and ability," or the other "influences," by which the income was produced or realized; and, inasmuch as the Legislature has furnished you with no rule or guide in this respect, I do not see why you are not justified in allowing and deducting the amount of six per cent. of the value of the stock, if that, in your judgment, is the right amount, from said income, in order to arrive at that part of the income which may be taxed, without violating that clause of the law which I have quoted. (§ 4, c. 11, Pub. Stats.) [R. L., c. 12, § 4.]

There is, however, no reason, as far as I can see, why you should deduct the amount of six per cent. of such value any more than the amount of four, five or seven per cent., or an amount arrived at in any other way, unless you find, of course, that the amount of six per cent. of such value is the right sum. The point is, in the practice of your board, I suppose, to deduct such an amount as is, or was, derived from the stock itself, if you can find what that amount is, so as to enable you to assess a tax only upon income derived from the skill, industry, etc., of the person to whom income "has accrued."

2. I do not see why, under the decision of the court in said case, you should abate or remit a properly assessed tax upon income, merely for the reason that, on or before the last day of April in any year, such income had been invested (and so on May 1 is found invested) in property which is on that day, May 1, taxable. I can see that this at first might appear like double taxation, but, under the definition of income given by the court

in said case, I do not think that it is so. "The income meant by the statute," says the court, "is an entirely different thing from the capital invested in the business."

I think that it is something like what was formerly called sometimes a "faculty tax." It is like the old tax on income under the United States Internal Revenue system.

The tax on the income is one thing, taxable by itself, and the tax on the property is another tax on another thing; and, to some extent, each is a tax also for a different period of time; a tax on income on May 1 is a tax on income which "has accrued" (§ 4, c. 11, Pub. Stats.) [R. L., c. 12, § 4], a tax on property (real estate for instance) on the same May 1 is practically, at least, though not perhaps theoretically, for a time subsequent to that.

It does not, I think, make any difference, as to its taxability, what is done with the income. It may be all used up in living expenses, or saved and invested in property, yet, as income received or "accrued," it is taxable just the same.

A tax therefore on both income and on the property in which it is subsequently invested is not double taxation, though both are assessed on the same day.

Therefore to remit the tax on income which has accrued to any person during the twelve months preceding the first day of May of any year, for the reason that he has, on or before the said first day of May, invested such income in taxable property, is, it appears to me, to give up, in such a case, the tax on income provided for in said § 4, c. 11, Pub. Stats. [R. L., c. 12, § 4], which the statute declares "shall be the subject of taxation."

The law provides that "no income shall be taxed which is derived from property which is subject to taxation," but it does not say that no income shall be taxed which is subsequently invested in property which is subject to taxation. I endeavor here merely to state what the law is. The policy of taxing such income, or income so invested, is another question, and not before me.

Very respectfully yours,

J. B. RICHARDSON,
Corporation Counsel.

See *Melcher v. Boston*, 9 Met. 73; *Day v. Buffinton*, U. S. Circuit Court, Mass. Dist., 1870, and same case reported with the decisions of the United States Supreme Court as *The Collector v. Day*, 11 Wall. 113.

DYER v. MELROSE.

Taxation — Salary of Federal Officer — Bank Deposit.

KNOWLTON, C.J. The property said to have been taxed illegally was money on deposit in two national banks. The ground on which the plaintiff claims for it an exemption from taxation is that it was derived from his salary as a rear admiral in the navy of the United States. He was a resident of the city of

Melrose, and was properly taxable there on all his personal property that was not exempt from taxation. He relies upon the decision in *Dobbins v. Commissioners of Erie County*, 16 Pet. 435, in which it was held that a State cannot lay a tax upon an office under the government of the United States, nor upon any means or instruments used solely for the maintenance of the federal government or the performance of any of its functions. The principle on which the case was decided has been reaffirmed repeatedly, and held to apply to taxation of State officers by the federal government. *Collector v. Day*, 11 Wall., 113. It precludes taxation by either government of the salary or emoluments of an officer of the other; but it has never been held, under a general provision for the taxation of the property of individual owners, to prevent the taxation of money or other property merely because it was derived from an official salary that had been received and held for use by the officer. The reason of the decision does not go far enough to warrant following the money after it has become a part of the general estate of the owner, and has lost its distinctive character as a part of the governmental machinery, which it has up to the time when it passes into the general control of the officer. In the *Railroad Company v. Periston*, 18 Wall. 5, the doctrine is stated as follows: "It is, therefore, manifest that exemption of federal agencies from State taxation is dependent, not upon the nature of the agencies, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the taxation; that is, upon the question whether the taxation does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform."

When the salary has been paid by the government to one of its officers and has come into his possession, it loses its identity as salary, and becomes money, effects or credits which are liable to taxation under the general law. It is within the principle which was applied, under the statute exempting pensions from a liability for debts, in *Kellogg v. White*, 12 Allen, 529; *Spellman v. Aldrich*, 126 Mass. 113; and *Tully v. Tully*, 159 Mass. 91. See also *Hibernia Savings and Loan Society v. San Francisco*, 200 U. S. 310. *Blake v. Bolte*, 31 N. Y. Sup. 124. *Melcher v. Boston*, 9 Met. 73.

Any other rule would enable one to hold property free from liability to contribution towards the support of the State government, merely because he obtained it as a compensation for services rendered to the federal government.

INHABITANT.

A man must have a domicile somewhere; can have but one; in order to lose one, must acquire another. Purpose to change residence unaccompanied by actual removal does not constitute a change of domicile. The

intent may be inferred from circumstances overriding declarations of the party.

If a minor leaves the domicil of his origin with the consent of his guardian, and lives for two consecutive years exclusively in another place, considering it as his home, — with no definite intent on the part of his guardian to cause him to return, — he acquires a new domicil in the latter place, and his property is taxable there.

Kirkland v. Whately, 4 Allen, 462.

When a life interest in personal property terminates at any time after the first of May, the life tenant or his representatives must bear the whole tax for the year.

Holmes v. Taber, 9 Allen, 246.

See DOMICIL.

INTEREST.

On Certain Taxes.

R. L., c. 12, § 72; c. 14, § 10.

See DISTRICT TAXES.

LIEN.

An invalid assessment is, or may be, an incumbrance or lien upon real estate. "The fact that the assessment is invalid does not remove the lien or incumbrance upon his land. The proper officers could, by proceedings in due form, correct the errors and reassess the same amount upon the land, and, if it was not paid, sell the land." *Morton, C.J., in Coburn v. Litchfield*, 132 Mass. 451.

Under R. L., c. 13, § 35, the lien for taxes assessed on real estate, where there has been no alienation of the property, continues after the expiration of two years until the tax is paid or the property is sold, and in such a case a purchaser at a tax sale made after the two years gets as good a title as if the sale had taken place within that period. *Abbott v. Frost*, 185 Mass. 398.

LISTS.

R. L., c. 12, §§ 41 and 74.

Where no list of property is brought in to the assessors, there is no statute that cash carriers for store service should be particularly described in the valuation list; and the classification

of certain other kinds of personal property which is called for by Pub. Stats., c. 11, § 43 [R. L., c. 12, § 49], appears to be intended chiefly for statistical purposes. *Lamson Consolidated Store Service Co. v. Boston*, 170 Mass. 354.

The list of estates, real and personal, which the inhabitants of towns are required to present to assessors before an assessment of taxes is made, is not intended to contain a statement of the estimated value of the property; and if the list contains a statement of the value, such statement is not, by section 22 of that chapter [now R. L., c. 12, § 48], conclusive on the assessors; but they are to exercise their own judgment in estimating the value of the property. *Inhabitants of Newburyport v. County Commissioners of Essex*, 12 Met. 211.

A person filed with the assessors of the town where he did business a list, enumerating in detail his real and personal property in that town, but it did not in terms state that it was all his property liable to taxation there. The jurat recited that "the statement and valuation is correct and true according to his best knowledge and belief." *Held*, that there was a substantial compliance with the requirements of the Gen. Stats., c. 11, §§ 22, 23, 25, 46. *Lanesborough v. County Commissioners*, 131 Mass. 424.

The Pub. Stats., c. 11, §§ 38 *et seq.*, do not provide that the furnishing of a list of taxable property on the part of any or all persons shall be a condition precedent to the assessment of taxes. *White v. New Bedford*, 160 Mass. 217.

If a tax list is made and filed in good faith, an omission therefrom of a single item of property, if honestly made, will not defeat the application of the person bringing in such list for an abatement of the tax assessed. *Wright v. Lowell*, 166 Mass. 298.

If a sufficient list of property subject to taxation is made and filed, a refusal of the person making it to answer upon oath all necessary inquiries as to the nature and amount of his property, on being thereto required by the assessors, while it may relieve the assessors from receiving his list as true, will not prevent him from applying for and obtaining an abatement of an excessive tax. *Wright v. Lowell*, 166 Mass. 298.

The list of taxable property required of tax payers by R. L., c. 12, § 41, the filing of which within the time fixed by the notice is made by section 74 of the same chapter a prerequisite to an abatement of taxes, must be sworn to before one of the persons authorized to administer the oath by section 43 of the same chapter. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

In the requirement of R. L., c. 12, § 73, that an application for the abatement of a tax shall be made within six months after the date of the tax bill, the term "tax bill" means the notice which the collector is required to send to each tax payer of the amount of his tax; and such a notice on a postal card properly addressed, stating the amount of the tax and for what, from whom and to whom it is due and where and when it is to be paid, and stamped with a post mark showing the day on which it was mailed, although not otherwise dated, is a sufficient tax bill within the meaning of the statute, so that an application for an abate-

ment of the tax filed more than six months after the date of such a notice is too late. *Amherst College v. Assessors of Amherst*, 193 Mass. 168.

If an executor, who has nearly distributed the estate in his hands, is assessed on the first of May for the amount assessed to him in the preceding year, and is allowed by the assessors until June 15 to bring in a list of the property in his hands, and does not give to them the notice and information required by the Pub. Stats., c. 11, § 20, cl. 7, in case of a distribution, until the November following, he cannot be said to have complied with the statute, and is liable for the amount so assessed to him. *Vaughan v. Street Commissioners*, 154 Mass. 143.

An executor or administrator must not only make the return called for by section 38 of the Pub. Stats., c. 11, of the property in his hands liable to taxation, but must in addition, in case of a partial or total distribution, give notice thereof, under the Pub. Stats., c. 11, § 20, cl. 7, to the assessors, stating the names and residences of and the amount paid to the several parties interested who are residents of this Commonwealth, in order to discharge his duty and avoid taxation, if it is within three years of his appointment, for the amount last assessed to him. *Vaughan v. Street Commissioners*, 154 Mass. 143.

MACHINERY.

The (fixed) machinery of manufacturing corporations organized under the laws of this Commonwealth is taxable by the local assessors. See R. L., c. 12, § 23, cl. 2, and R. L., c. 14, §§ 37-42. Stat. 1903, c. 437, §§ 72-74.

Pipes and meters of a gas light company are to be regarded as machinery.

Commonwealth v. Lowell Gas Light Co., 12 Allen, 75 (1886).

Pipes of an aqueduct company are not to be regarded as machinery.

Dudley v. Jamaica Pond Aqueduct Co., 100 Mass. 183 (1868).

A portable steam saw-mill temporarily located in a town on the first day of May is not taxable there as "machinery employed in any branch of manufactures" and "situated or employed" there, within the meaning of the R. L., c. 12, § 23, cl. 2, nor can its product in timber and sawed lumber be taxed there if the owner's temporary occupancy of land with the saw-mill is the only evidence that he there occupied a manufactory, store, shop or wharf, as required by cl. 1.

Ingram v. Cowles, 150 Mass. 155.

Laws Regulating Taxation.

Quarrying stone and breaking it up for use on roads and other similar purposes is not a manufacturing business within the meaning of R. L., c. 12, § 23, cl. 2, which provides that "all machinery employed in any branch of manufactures shall be assessed where such machinery is situated or employed." *Wellington v. Belmont*, 164 Mass. 142.

The pipes and mains of a water company are not machinery employed in any branch of manufactures within the meaning of the second exception of R. L., c. 12, § 23, in regard to the assessment of personal property for taxation. *Coffin v. Artesian Water Co.*, 193 Mass. 274.

MONEY.

At any meeting subsequent to the annual town meeting which is held before the rate of taxation for the year is fixed, money may be voted for any lawful purpose, and the amount so voted may be included in the tax of the current year. *Freeland v. Hastings*, 10 Allen, 571.

NATIONAL BANKS.

Taxation of Shares in.

R. L., c. 12, § 36; c. 14, §§ 9-18.

A State may tax shares held in national banks organized under U. S. Stat. of 1864, c. 106, and may authorize the assessment of such tax in the city or town within the same State where the owner resides. *Austin v. Boston*, 14 Allen, 359 (1867).

It has been decided by the Supreme Court of the United States in a recent case, that the shares in national banks are taxable to the owners thereof at their market value, *without* any deduction on account of the investments of the bank in United States securities.

Under the law of this Commonwealth above given, however, a proportionate deduction must be made from the value of each share of Massachusetts national banks owned by non-residents, for real estate owned by the bank and taxed in the place where the bank is located.

The U. S. Stat. of 1864, c. 106, § 41, makes unlawful the imposing by, or by the authority of, a State of a tax on shares owned by an inhabitant thereof in the capital stock of a national banking association organized under that statute and located in another State. *Flint v. Boston*, 99 Mass. 141 (1868).

The whole subject of the taxation of the shares in national banks has been fully considered by the Supreme Court of Massachusetts in the cases of the Provident Institution for Savings v. City of Boston. Same v. F. U. Tracy. Pliny Jewell v. City of Boston. Same v. F. U. Tracy, March, 1869. The court, after reviewing the previous decisions, and considering the various objections, conclude their opinion as follows:—

“The conclusion, then, at which we arrive is, that the statute of 1868, c. 349, does not transcend or conflict with, the limitations expressly set forth in the acts of Congress; that practically it produces no appreciable disproportion among tax payers as compared with each other; that the omission of the shares of non-residents from the town valuations produces no actual want of due proportion, for the reason that the general result of the taxation, supposing the statute to be held valid, is substantially identical to each tax payer with what it would be if the shares of non-residents were included in those valuations, and taxed in the same manner in all respects as the real estate of non-resident owners is taxed; and that, although in one mode of proceeding, the sum total of the valuations is less than the other, yet the aggregate of the amount to be raised under the heads of county, municipal and State taxes, is diminished in exactly the same proportion. As to the objection that it is retrospective in its operation, it seems to be enough to say that, under the acts of Congress, the property was certainly taxable in such lawful manner as the Legislature of the Commonwealth should direct. Whoever, then, on the first day of May, 1868, held such property, knew, or was bound to know, that it was taxable, like other moneyed capital as of that day, in such manner as by law might be provided.” 101 Mass. 575 (1869).

In the recent case of the National Bank of Redemption v. the City of Boston (1888), the Supreme Court of the United States sustained the validity of our statutes in relation to the taxation of shares in national banks. 125 U. S. Rep. 60.

List of Shareholders, how returned.

R. L., c. 14, § 12.

Authority to make the examination required by this section is also contained in the following extract from the act of Congress establishing national banks:—

“And be it further enacted, That the president and cashier of every such association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted; and such lists shall be subject to the inspection of all the shareholders and creditors of the association and the officers authorized to assess taxes under state authority, during business hours of each day in which business may be legally transacted; and a copy of such list, on the first Monday of July in each year, verified by the oath of such

Act of Congress, June 3, 1864, § 40.

president or cashier, shall be transmitted to the comptroller of the currency."

The word "person" in the Pub. Stats., c. 11, §§ 69, 71, 72, and the Stat. of 1890, c. 127, § 1, relating to the abatement of taxes, extends to a corporation [now R. L., c. 12, §§ 73, 74, 78].

A list, with the name of each shareholder, his residence, and the number of his shares, as required by the Pub. Stats., c. 13, § 11 [now R. L., c. 14, § 12], to be furnished to the assessors of taxes where a bank is located, and where, by § 8, all the shares are to be assessed, satisfies, in the case of national banks, the requirement of the Pub. Stats., c. 11, § 72 [now R. L., c. 12, § 74], which provide that no person shall have an abatement of taxes unless he has filed with the assessors a list subscribed by him of his estate liable to taxation. *National Bank of Commerce v. New Bedford*, 155 Mass. 313.

See EXEMPTION FROM TAXATION; RATE.

The excess of the assets over the liabilities of a national bank at a stated time is of no importance in determining the fair cash value of its shares for the purposes of taxation, where there is sufficient evidence of a sum for which the shares could have been sold on that date. *National Bank of Commerce v. New Bedford*, 175 Mass. 257.

A national bank, at the trial of a petition for the abatement of a tax assessed upon its shares, supported the report of a commissioner that the fair cash value of its shares for the purposes of taxation was their market value as found by him. Subsequently the bank voted to petition for an abatement of the tax for 1897 upon the basis of the difference between the assessed valuation and the fair cash value of its shares based on the cash sales on or about May 1 of that year. The assessors had requested the bank to submit a statement of the price at which its shares were actually sold at the last sale prior to May 1, mentioning that the last quoted sale before that day was at a certain rate, to which the bank made no reply. *Held*, that the bank was not estopped to set up that the fair cash value of its shares for the purpose of assessment was less than the cash sales on or about May 1, 1897. *National Bank of Commerce v. New Bedford*, 175 Mass. 257.

OMITTED ESTATES AND POLLS.

Assessors may assess.

R. L., c. 11, § 19; c. 12, § 85. 130 Mass. 562; 137 Mass. 266.

Polls and Estates assessed upon Request.

R. L., c. 11.

Of Women.

R. L., c. 11, § 13.

PARTNEERSHIP.

Ships or vessels owned by a partnership, where assessed. See R. L., c. 12, § 28. *Bemis v. Boston*, 14 Allen, 366 (1867).

See ASSOCIATIONS; PERSONAL PROPERTY; SHIPS OR VESSELS.

PERSONAL PROPERTY.

Damages to which a landowner is entitled for the taking of his land for the alteration of a highway under the Stat. of 1866, c. 174, are not a debt for which he is taxable under the Gen. Stats., c. 11, §§ 2, 4, before they have become fixed and receivable. *Lowell v. Street Commissioners of Boston*, 106 Mass. 540.

The case of *Lowell v. Street Commissioners of Boston* has been thought by some to establish the doctrine that unliquidated debts or claims cannot be assessed. The following case, decided in 1883, corrects such an impression. The head note and the opinion of the court is here given:—

When the original assessment of a tax is valid its reassessment is void.

Under the Pub. Stats., c. 11, § 4 [R. L., c. 12, § 4], providing that personal property for the purposes of taxation shall include "debts due the persons to be taxed more than they are indebted or pay interest for," a tax upon a debt due an intestate is properly assessed to the creditor, although the amount is in dispute, if it is conceded by the administrator to be as much as that taxed, and is finally compromised, by authority of the Probate Court by the payment of a larger sum.

DEVENS, J. If the original assessment to William H. H. Dearden, in 1881, of \$12,000, for the debt due from the estate of Marble, was valid, the action of the assessors in 1882 in reassessing the tax to the defendant, the administrator of Marble, was unauthorized and void. *Oakham v. Hall*, 112 Mass. 535. In describing the personal property which is liable to taxation it is provided that it shall include "money at interest and other debts due the persons to be taxed more than they are indebted or pay interest for." Pub. Stats., c. 11, § 4 [R. L., c. 12, § 4].

Dearden had a claim for services rendered during nineteen or twenty years to this estate, upon which he demanded \$23,000, which was finally compromised, by authority of the Probate Court, by the payment to him of \$13,100. It is contended that, as the claim was not for a definite and specific sum due by express agreement, but an unliquidated claim, the amount of which could only be ascertained by determining the value of Dearden's ser-

vices, it was not a debt within the meaning of the statute relating to taxation. This construction of the statute is not satisfactory. A claim is not the less a debt because the exact amount due cannot be at the time of the assessment ascertained with mathematical accuracy. The difficulty of determining its value is not greater, probably, than that which attends the valuation of other property; and, if it be too highly rated, the same remedies exist that are found in other cases of over-valuation. So far as a debt is admitted by the debtor at any rate (as was the sum of \$12,000 assessed to Dearden), it certainly must be an appropriate subject of taxation. It cannot become otherwise because the creditor claims more than is admitted, and thus himself introduces an element of uncertainty. The words "other debts due the persons to be taxed," when used in connection with the words "more than they are indebted or pay interest for," contemplate an estimate of the financial position of the person to be taxed before deciding that he is liable as a creditor to this tax and also the extent to which he is thus liable.

The plaintiff relies upon *Lowell v. Street Commissioners*, 106 Mass. 540, where it is held that a claim for land damages, when a road has been laid out and the right to damages has accrued, is not taxable to the owner until the damages become fixed and receivable as his absolute personal property. The reason of this is that until that time the true amount of the conversion of the real estate of the owner into personal cannot be ascertained, as it may be subjected to the repayment by way of an assessment for expenses of the whole amount awarded as damages. As the land damages might thus be absorbed entirely there could be no debt until it was ascertained that this would not happen.

In the case at bar there was no dispute that a debt was due; all that was disputed was the amount, and that was conceded to be as much as was assessed to Dearden. The tax upon \$12,000 was therefore rightly assessed to William H. H. Dearden.

The assessment to George R. Dearden requires no separate consideration. It was rightly assessed for the reasons already given. Judgment affirmed. *Deane v. Hathaway*, 136 Mass. 129.

Assessors of taxes are not bound by a list of property brought in for assessment and sworn to, if it appears from an examination of the person who brings it in that it is not true. *Hall v. Middlesex*, 10 Allen, 100 (1865). See *Moors v. Boston*, 134 Mass. 431.

United States internal revenue stamps are not subject to State or local taxation as property, nor "as stock in trade." *Palfrey v. Boston*, 101 Mass. 329 (1869).

Goods imported from a foreign country, upon which the duties and charges at the custom house have been paid, are not subject to State taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports or upon the goods as part of the general property of the citizens of the State, which is subjected to an *ad valorem* tax.

Goods imported do not lose their character as imports and become incorporated into the mass of property of the State

until they have passed from the control of the importer or been broken up by him from their original cases. *Low et al. v. Austin*, U. S. S. C., 1872.

Manufacturing corporations are not taxable for their personal property in the town where their manufactory is established. *Salem Iron Co. v. Danvers*, 10 Mass. 514. *Amesbury Woolen Co. v. Amesbury*, 17 Mass. 461. Otherwise as to their real estate. *Goodell Manufacturing Co. v. Trask*, 11 Pick. 514. And their fixed machinery. *Boston and Sandwich Glass Co. v. Boston*, 4 Met. 181. *Dunnell Manufacturing Co. v. Pawtucket*, 7 Gray 277.

An incorporated street railroad company is not taxable for horses or other personal property used in and necessary to the prosecution of its business. *Middlesex Railroad v. Charlestown*, 8 Allen, 330 (1864).

An aqueduct company is not taxable for its pipes, as being machinery, under 1865, c. 283. *Dudley v. Jamaica Pond Aqueduct Co.*, 100 Mass. 183 (1868). Otherwise as to a gas light company. *Commonwealth v. Lowell Gas Light Co.*, 12 Allen, 75 (1866).

If a foreign corporation has a place of business in this Commonwealth, where it has personal property, consisting of office furniture and fixtures, and where it keeps personal property pledged to it as collateral security for money lent, which it sells when not redeemed, such place of business is a "shop" and the property so used and pledged is "stock in trade," which is taxable to it under the Gen. Stats., c. 11, § 12, cl. 1 (now Pub. Stats., c. 11, § 20, cl. 1) [R. L., c. 12, § 23, cl. 1]. *Boston Loan Co. v. Boston*, 137 Mass. 332.

The personal estate of an unmarried woman is liable to taxation in this Commonwealth, although, by the Constitution, women are not allowed to vote. *Wheeler v. Wall*, 6 Allen, 558 (1863).

The interest of an inhabitant of this Commonwealth as a partner in the property of a firm established and carrying on business in another State is taxable here. *Bemis v. Boston*, 14 Allen, 366 (1867).

The owner of a farm situated in two towns, his house being in one and his barn in the other, is taxable in the latter for his horses which are habitually kept, fed and watered in the barn, although used on the entire farm, under the Pub. Stats., c. 11, § 20, cl. 3 [R. L., c. 12, § 23, cl. 3], which provide that "horses . . . kept throughout the year in places other than those where the owners reside . . . shall be assessed to the owners in the places where they are kept." *Pierce v. Eddy*, 152 Mass. 594.

The provision of Pub. Stats., c. 11, § 20, cl. 1, that "All goods, wares, merchandise, and other stock in trade . . . shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves," does not describe or include the capital used by a stockbroker in his business, and such capital is taxable to the stockbroker where he has his home and not where he has his office. *Prince v. Boston*, 193 Mass. 545.

R. L., c. 13, § 33, in regard to the collection of taxes where the person assessed dies or becomes insolvent, which provides that "the executor, administrator or assignee" upon the receipt of

any money applicable to the payment of the tax shall be liable for such tax after a demand, does not give a remedy against the assignee under a common law assignment for the benefit of creditors, even if the assignor is in fact insolvent, the word "assignee" referring only to an assignee in insolvency under the statutes of the Commonwealth. *Scollard v. Edwards*, 194 Mass. 77.

The following is an opinion in a case of taxation of intoxicating liquors, by which it appears that the owners are liable to taxation, although the sale is illegal:—

CHAPMAN, C.J. The liquors which were taxed were property, and the law protected them as such. An action might be maintained by the owner against one who should tortiously take them from him. *Ingalls v. Baker*, 13 Allen, 449. They were not a nuisance, unless kept for sale illegally. Gen. Stats., c. 86, § 60. The petitioner does not allege that he kept them for sale. As personal property they were taxable by Gen. Stats., c. 11, § 42. Petition dismissed. *Dunbar v. Boston*, 101 Mass. 317 (1869).

The following report is of interest, as bearing upon the question of the *place of business* of a *copartnership* and the *taxation of its personal property*.

"Persons not residing in a town, and having therein no store, shop or wharf, are not subject to taxation there by reason of their hiring a yard in which they keep and sometimes sell lumber, and have put up a small building for the convenience of men employed by them." *Loud v. Charlestown*, 103 Mass. 278 (1870).

A dealer in ice had, in a town other than that in which he resided and had his office, a storehouse, in which the ice which constituted his stock in trade was kept, and from which it was delivered on contracts principally made elsewhere. *Held*, that the building in which the ice was kept was not a "store" within the Gen. Stats., c. 11, § 12, cl. 1 (now Pub. Stats., c. 11, § 20, cl. 1) [R. L., c. 12, § 23, cl. 1]; and that the ice was not taxable to him in that town. The cutting of ice on the surface of a pond, and storing the pieces so cut in a building, is not a "manufacture," so that the machinery employed therein is taxable to the owner, under the Pub. Stats., c. 11, § 20, cl. 2 [R. L., c. 12, § 23, cl. 2]. *Hittinger v. Westford*, 135 Mass. 258.

"Stock in trade" must be domiciled in the place where the owner has his "store" or "shop," in order to be taxable to him there, under Pub. Stats., c. 11, § 20, cl. 1 [R. L., c. 12, § 23, cl. 1]. *Hittinger v. Boston*, 139 Mass. 17.

A foreign corporation had a general office in B. and a store in L., both in this Commonwealth. On May 1 it had sewing machines in L. in the possession of persons under contracts, by the terms of which each person agreed to pay as rent a certain sum monthly until a certain other sum should be paid, and then to

return the machine to the company, or to purchase the machine for one cent. These machines were delivered from the store in L., and the contracts were immediately sent to the office in B., which took charge of and enforced them. The employees in the store in L. had no further connection with the machines after delivery except to make collections, and to remit them to the office in B. If the persons having the machines did not pay under their contracts, which seldom happened, the employees in L., acting under general directions from the office in B., took possession of the machines. *Held*, under Pub. Stats., c. 11, § 20 [R. L., c. 12, § 23], that the machines were properly taxable to the corporation in L. as "stock in trade." *Singer Manufacturing Co. v. County Commissioners of Essex*, 139 Mass. 266.

A firm, one member of which resided in B. and the other in N., had an office in B., where its books were kept, and in which it also kept a small stock of goods as samples, and for the accommodation of retail customers. It had three factories where its goods were made, one in B., one in N., and one in W. The goods made at the factory in W. were put into an adjacent storehouse, and there kept until sold. Nearly all the sales were made on orders received at the office in B., and one of the partners went each day to one or another of the factories, and shipped the goods from those there stored direct to the customers. *Held*, that the firm had a "place of business" in W., and the goods made and stored there were "employed" in its business, and were taxable there, under the Pub. Stats., c. 11, § 24 [R. L., c. 12, § 27]. *Barker v. Watertown*, 137 Mass. 227.

The Stat. of 1849, c. 96, made the trustees of certain funds given for charitable purposes a corporation; and provided, in § 4, that "no part of the funds aforesaid shall, by the operation of this act, be exempted from taxation, but, for the purpose of taxation, said funds shall be equally proportioned among" certain towns named. *Held*, that the funds in question were subject to the general laws, passed from time to time, relating to the taxation of property, as they would have been if the trustees had remained unincorporated. *Held*, also, that the statute did not authorize a franchise tax. *Held*, also, that the Pub. Stats., c. 13, § 52 [R. L., c. 14, § 36], providing that property held in trust by the class of corporations therein named shall, for the purposes of taxation, be governed by the provisions of their charters, and the Pub. Stats., c. 11, § 38 [R. L., c. 12, § 41], requiring a list of taxable property to be given to the assessors, did not apply to this corporation. *Greenfield v. County Commissioners*, 135 Mass. 566.

Bonds issued by a railroad corporation, which is managed by its stockholders for the purposes of private gain, are not "public stocks and securities," within the meaning of the Pub. Stats., c. 11, § 4 [R. L., c. 12, § 4], but are "debts due," and the money invested in them is "money at interest," from which the owner is entitled, in determining the amount for which his personal estate shall be taxed, under that statute, to have money upon which he is paying interest deducted, although the corporation is established by an act of Congress of the United States, and large

grants of land have been made to it by Congress to aid in its construction for public purposes, and the bonds are secured by a mortgage on its road, and the mortgage is, as required by law, filed and recorded in the office of the Secretary of the Interior, and the corporation is to some extent subject to government control. *Hale v. County Commissioners*, 137 Mass. 111.

But see Stat. 1888, c. 363, which provides that all railroad bonds shall be taxable in connection with public stocks and securities; that is, without deduction for debts due by the holder.

Money deposited in a national bank, and bearing no interest, is liable to be taxed to the depositor, under the Pub. Stats., c. 11, § 4 [R. L., c. 12, § 4], without any deduction on account of debts due from him. *Gray v. Street Commissioners of Boston*, 138 Mass. 414.

If a person buys a parcel of land at a tax collector's sale, and receives a deed thereof, which is recorded before the first day of May and no other transfer of the parcel is made until after that date, he is the "person appearing of record as owner" within the Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15], and a tax upon the land is properly assessed to him, although the former owner had on said first day of May a right to redeem the land. *Butler v. Stark*, 139 Mass. 19.

In the ordinary relation between broker and customer, when stocks are bought on a margin the legal title to the stocks is in the broker, and they are taxable to him. *Chase v. Boston*, 180 Mass. 458.

A receiver of a corporation cannot be taxed on money in his hands, though deposited in his name as receiver. The legal title is in the company, for which and its creditors the receiver is agent. *City National Bank v. Charles Baker Co.*, 180 Mass. 40.

R. L., c. 12, § 26, providing that "personal property mortgaged or pledged shall for the purpose of taxation be deemed the property of the party in possession thereof on the first day of May," refers only to tangible property, and does not apply to a pledge of shares of stock in a corporation. *Chase v. Boston*, 193 Mass. 522.

Stat. 1903, c. 423, § 1, relating to the transfer of shares in corporations by delivery of the certificates signed in blank, now contained in Stat. 1903, c. 437, § 28, does not operate to make the pledgee of such shares the absolute owner; and where certificates thus signed in blank are delivered as security under a contract of pledge, the shares are taxable to the pledgor. *Chase v. Boston*, 193 Mass. 522.

"Goods, wares, merchandise and other stock in trade . . . employed in the business of manufacturing or of the mechanic arts," which, under the first exception of R. L., c. 12, § 23, are taxable to the owners thereof in the cities or towns in which they "hire or occupy manufactories, stores, shops or wharves," do not include a printing press and other personal property used in publishing a bulletin of information to bankers every five minutes during business hours, containing information which ceases to be of value as soon as it becomes matter of common knowledge,

such a business not being manufacturing nor the place where it is carried on a manufactory within the meaning of a statute, even if the property used in the publishing properly can be called goods, wares or merchandise. *Barron v. Boston*, 187 Mass. 168.

Where a broker buys shares of stocks upon orders in writing from his separate customers, with a specific agreement with each customer that the ownership shall be in the customer subject to a lien of the broker for any indebtedness to him, each order directing the broker to buy a certain number of shares of specified stocks for the account and risk of the purchaser, and the broker makes the purchases as directed and notifies each customer of the purchase and the price paid, and the customers make part payments to the broker, usually of about forty per cent. of the price, and the certificates of the purchased shares with blank transfers signed by the former owners named therein are left with the broker as security for the balance of the price due from each customer to the broker, the broker being expressly authorized by the customer to pledge the shares for loans to himself, and the broker does this as his convenience demands, but the certificates of stock bought for and belonging to each customer are kept apart in a separate envelope, whether pledged or not, the broker holds the shares as a pledgee with the right to repledge them to others, and they are not taxable to him, but are taxable to the customers who are the owners and pledgors. *Chase v. Boston*, 193 Mass. 522.

And the following decides that a citizen of one town, owning hotel furniture in a hotel in another town, is taxable therefor in the place of his residence, and not in the place where the hotel is situated.

SUPREME JUDICIAL COURT.

JANUARY, 1872.

CITY OF CHARLESTOWN *v.* COUNTY COMMISSIONERS OF MIDDLESEX.

Opinion of the Court.

MORTON, J. This is a petition for a writ of *certiorari* to quash the proceedings of the county commissioners upon a complaint by Daniel Chamberlin for the abatement of a tax assessed upon him by the city of Charlestown in the year 1869. The respondents, as a part of their answer, file a full copy of their record of proceedings in the premises. It appears that said Chamberlin, in May, 1869, was a resident of Boston, and was lessee of the Waverley House in Charlestown, which he was carrying on as a hotel, and that he owned the furniture of said hotel. Within the time required by the notice of the assessors, namely, on June 9, 1869, he filed with the assessors a list of his estate liable to taxation, subscribed and sworn to by him, which list included the furniture of the hotel, valued at \$62,000, and other personal property valued at \$3,000.

The assessors did not accept this valuation; but assessed a tax upon the said Chamberlin for personal property to the value of \$75,000.

He thereupon duly applied to the assessors for an abatement of his tax; and they abated the tax upon \$10,000 and refused to make any further abatement. Within one month after such refusal he filed his complaint, in the nature of an appeal, with the county commissioners, who, after due notice and a hearing, abated the tax assessed upon the furniture of the hotel.

The first and most important question in the case is, whether Mr. Chamberlin was taxable in Charlestown upon the furniture owned by him and used in carrying on the hotel.

He was an inhabitant of Boston. The general position of the statute is, that "all personal estate within or without this State shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May." Gen. Stats., c. 11, § 12 [R. L., c. 12, § 23].

Mr. Chamberlin, therefore, was taxable for this furniture in Boston, unless the case is within one of the exceptions to this general provision. The petitioners claim that it falls within the first exception, which is as follows: "All goods, wares, merchandise and other stock in trade (except ships or vessels owned by a copartnership), including stock employed in the business of manufacturing or of the mechanic arts, in cities and towns within the State other than where the owners reside, whether such owners reside within or without this State, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops or wharves, whether such property is within such places or elsewhere, on the first day of May of the year when the tax is made."

To make a person taxable, under this provision, in a town of which he is not an inhabitant, it must appear that he hires or occupies a manufactory, store, shop or wharf in such town. Unless he does, he is not taxable in such town for any goods or merchandise he may have there, however large in value, but is liable to taxation upon such goods in the town of which he is an inhabitant. *Huckings v. Boston*, 4 Cush. 543. *Loud v. Charlestown*, 103 Mass. 278.

We think this case does not fall within this provision. Mr. Chamberlin hired and carried on the hotel in Charlestown; but it would be a distortion of language to say that this hotel was either a manufactory, shop, store or wharf. Upon no reasonable construction of the language of the statute relied upon by the petitioners can the case be held to be within its provisions. The commissioners correctly decided that he was not taxable in Charlestown upon the furniture used in the hotel.

But the petitioners contend that neither the assessors nor the commissioners had authority to abate the tax, because Chamberlin included the furniture in his sworn list as property liable to taxation. We find in the statutes no such limitation of the power of the commissioners or assessors. If the tax payer makes it appear that he is taxed at more than his just proportion they are to make a reasonable abatement. Gen. Stats., c. 11, §§ 43-46 [R. L., c. 12, §§ 73-74].

We can see no reasons of justice or public policy why, if he, by a mistake of his rights, returns to the assessors, as liable to taxation, property which is by law exempt, he should be thereby estopped to claim a reasonable abatement and compelled to pay more than his just proportion of the taxes. This question was substantially decided in *Dunnell Manufacturing Co. v. Pawtucket*, 7 Gray, 277.

The evidence offered in this court to the effect that said Chamberlin devoted a part of the hotel to the sale of cigars and liquors to the public as well as the guests of the hotel, and for a public billiard table, was inadmissible. They cannot by evidence, *aliunde*, control the records of the commissioners. *Mendon v. County Commissioners*, 15 Allen, 13.

The petitioners further contend that the commissioners erred in awarding that the city of Charlestown pay the costs of the proceedings to be taxed by the commissioners.

It was decided in *Lowell v. Commissioners of Middlesex*, 3 Allen, 546, that the commissioners have no power to award costs in such cases.

This part of their judgment, therefore, was erroneous; and, for the sole purpose of correcting this error, a writ of *certiorari* may issue. *Charlestown v. County Commissioners of Middlesex*, 109 Mass. 270.

Stat. of 1882, c. 218, authorizes county commissioners to award costs. See also 1890, c. 127 [R. L., c. 12, § 77].

Partners whose principal place of business is in the city of B. cannot be taxed in the town of C. as the place where their business is carried on, within the meaning of Pub. Stats., c. 11, § 24 [R. L., c. 12, § 27], from the fact that, by a contract with the Superintendent of the State Reformatory in C. they transact business there wholly incident to work done by the State and in a place under its exclusive control. *Cloutman v. Concord*, 163 Mass. 444.

PERSONAL PROPERTY OF PARTNERSHIP.

The fact that boards sawed by partners in D., where they own a permanent sawmill, dam and mill privilege, are box boards, and are mainly used by them in the manufacture of boxes at their box factory in H., does not change the principle that they have a place of business in D.; and the personal property employed in that business is rightly taxed to the partnership in D. under Pub. Stats., c. 11, § 24 [R. L., c. 12, § 27]. *Duxbury v. County Commissioners*, 172 Mass. 383.

In an action to recover the amount of a tax paid under protest, it appeared that the plaintiffs with one M. lived in the defendant city, but carried on no business there; that they were copartners having a factory in N. in another State, and that the tax in question was assessed on account of their partnership property there situated. The judge was warranted in finding that B. in this Commonwealth was the place of business of the firm. *Held*, that,

under Pub. Stats., c. 11, § 24 [R. L., c. 12, § 27], the property was taxable in B., and that the action could be maintained. *Spinney v. Lynn*, 172 Mass. 464.

Where articles of copartnership provide that on the death of one of the partners his share of the capital shall remain in the business for two years, the surviving partner paying interest thereon to the estate of the deceased partner, and, upon the death of one of the partners, the surviving partner agrees with the executor of the will of the deceased partner as to the balance due from the partnership to the testator which still is used under the agreement as part of the capital of the firm, the debt to the estate can be taxed in the hands of the executor as personal property, although this results in double taxation. *Williams v. Brookline*, 194 Mass. 44.

PERSONAL PROPERTY LEASED FOR PROFIT.

Personal property leased for profit, situated in a city within the Commonwealth and owned by a foreign corporation, is taxable under the Stat. of 1889, c. 146, entitled, "An Act providing for taxation of leased properties in use in this Commonwealth." *Lamson Consolidated Store Service Co. v. Boston*, 170 Mass. 354.

Lanterns belonging to a Maine corporation, used by it under a contract for lighting the streets of Boston with gas and naphtha and for cleaning, repairing and maintaining the street lanterns, are used in the business of the company and under its control, and are not taxable as personal property "leased for profit," under Stat. 1889, c. 446, now incorporated in R. L., c. 12, § 23, cl. 2. *Rising Sun Street Lighting Co. v. Boston*, 181 Mass. 211.

Personal Estate of Deceased Persons.

R. L., c. 12, §§ 23, 24, 50.

See COLLECTORS; DECEASED PERSONS. *Hardy v. Yarmouth*, 6 Allen, 277. *Carleton v. Ashburnham*, 102 Mass. 348. *Wood v. Torrey*, 97 Mass. 321, for the old law.

POLLS.

R. L., c. 12, §§ 1, 13, c. 11.

POOR DEBTOR'S OATH.

R. L., c. 13, § 28.

PROTEST.

A protest to be valid as a basis for a suit at law to recover a tax illegally assessed, must be in writing "signed by the person paying the same," filed with or delivered to the collector before or at the time of payment; and an action to recover the amount must be "brought by the person assessed for the tax within three months after such payment." Stat. 1888, c. 390, § 94 [R. L., c. 13, § 86]. *Knowles v. Boston*, 129 Mass. 551.

RATE.

In cities and towns in which any national bank is located. R. L., c. 12, §§ 36, 55.

See NATIONAL BANKS.

REASSESSMENT OF TAXES.

R. L., c. 12, §§ 86, 87. See cases cited in margin and 136 Mass. 132.

See TAXES.

REAL ESTATE.

Assessment to Owners Unknown.

Assessors, knowing who is in possession of real estate, cannot legally assess its tax "on owners unknown;" neither can they make such an assessment, knowing or having the means of knowing in whom the record title is. *Oakham v. Hall*, 112 Mass. 535.

The question as to who is liable to pay the tax on land sold and conveyed on the first day of May, or immediately thereafter, is settled by the following decisions of our Supreme Court:—

CHAPMAN, C.J. On May 1, 1868, when the taxes were assessed, the land became liable for their payment. It is true that payment was not to be made till the tax bills should be made out and put into the hands of the collector, and all the necessary preliminary steps should be taken on his part. It is also true that they might be collected otherwise than by a sale of the land; and thus its liability might terminate, or it might cease by lapse of time. But they have not been paid otherwise, and the purchaser has been compelled to pay them. He was obliged to pay them in order to relieve the land from a liability to which it was subject when he took his conveyance with the covenant against encum-

brances. These taxes had all the characteristics of an encumbrance. What constituted the encumbrance was the present paramount right of the city to hold the land subject to the payment of the taxes already assessed, if they should not be paid otherwise. It is none the less an encumbrance because the taxes might be collected otherwise. It might as well be contended that a mortgage to secure a note given by a third person was not an encumbrance, because the note might be collected of the maker.

It is contended that this is no more an encumbrance than the liability of the land for the taxes that may be assessed in future years. But the obvious difference is, that there can be no liability for an assessment which does not exist, and the covenant relates merely to existing encumbrance. *Cochran v. Guild*, 106 Mass. 30.

SUPREME JUDICIAL COURT.

LAW — OCTOBER, 1872.

WILLIAM H. HILL, JR., v. JOSIAH BACON.

Opinion of the Court.

Bacon sold land to Hill by a deed dated April 30, but acknowledged and recorded May 1. Hill paid the tax for the year under protest and sued to recover the amount paid. The opinion of the court is by

WELLS, J. Taxes are assessed as of the first day of May in each year; and on real estate, "to the person who is either the owner or in possession thereof on the first day of May." Gen. Stats., c. 11, § 8 [R. L., c. 12, § 15]. They "constitute a lien thereon for two years after they are committed to the collector." Gen. Stats., c. 12, § 22 [R. L., c. 13, § 35]. To be effectual, this lien must relate back to the first day of May. Such, doubtless, was the intent, and should be the construction of this provision of law; although, practically, the tax is not assessed until some weeks or perhaps months later.

It is agreed that the defendant "was the owner and in possession" of the land in question on the first day of May, 1869. The tax, then, was lawfully assessed to him, and constituted a lien upon the land. There is no point of time, less than the day, at which the tax can be regarded as laid. It will be sustained by ownership or possession during any part of the day. It would have been equally valid if it had been assessed to the plaintiff, who became owner on that day.

The covenant against encumbrances relates to the present condition of the title. Whether a lien, to be created by the laying of a tax, subsequent in actual imposition, but by law relating back to the first day of May, constitutes a breach of this covenant in a deed dated April 30, and delivered May 1, we need not decide, because we think it is clearly a breach of the covenant to warrant and defend; and, upon the agreed facts, if it is held to be a breach of either covenant, the plaintiff is entitled to the same measure of damages in one case as in the other. The covenant to warrant and defend is prospective. The tax being lawfully assessed to the defendant constituting a lien upon the land, and that lien being enforced by a sale in due form, the plaintiff was

obliged to buy in the superior title to protect himself from eviction. The outstanding title or right being derived through the defendant, there was a literal breach of his covenant to warrant and defend. 2 Greenl. Ev., § 244. 2 Wash. Real Prop., 666. *Curtis v. Deering*, 12 Maine, 499.

Invalid assessment a lien on real estate. 132 Mass. 451. See **LIEN.**

The warrantor is bound by the literal purport of his covenant. Judgment for the plaintiff. *Hill v. Bacon*, 110 Mass. 387.

A tax on real estate may be assessed to a person who appears by the records to be the owner, if the municipality assessing the tax has no notice that he has previously conveyed the land. *Tucker v. Deshon* and another, 129 Mass. 559.

A life tenant may be taxed as the owner of land under Pub. Stats., c. 11, § 13 [now R. L., c. 12, § 15]. *Bates v. Sharon*, 175 Mass. 293.

Real estate in the possession of a mortgagee, the equity of redemption of which has been conveyed, was improperly taxed to the mortgagor. It was afterwards sold and conveyed under a power of sale in a second mortgage, and the tax was subsequently reassessed under the Gen. Stats., c. 11, § 53, to the holder of the equity, based upon a valuation other than that of the year for which the tax was originally assessed. *Held*, that the reassessment was invalid.

If land is sold for a tax improperly assessed, the true owner, if in possession, may maintain a bill in equity against the purchaser at the tax sale to quiet his title. *Davis v. Boston*, 129 Mass. 377 (1880).

The owner of a parcel of land died, leaving a widow and an heir at law. Dower was not assigned to the widow, and she, acting as agent for the heir at law, let the land to a tenant. While the tenant was in sole occupation of the land, a tax upon it was assessed to the widow. *Held*, that the widow was not the person "in possession," within the Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15]; and that the assessment was invalid. *Lynde v. Brown*, 143 Mass. 337.

On Mortgaged Property.

The provisions of R. L., c. 12, §§ 16, 18, in regard to separate taxation of the interests of mortgagors and mortgagees in real estate, do not apply to a mortgage made by a corporation organized under the laws of another State, which includes besides real estate in this Commonwealth real estate in other States, and also the machinery, equipment, patents, trademark and franchises of the corporation. *Brooks v. West Springfield*, 193 Mass. 190.

Of Mortgaged Real Estate.

Under our statutes, taxes on mortgaged real estate, where neither the mortgagor nor the mortgagee has required a separate assessment, are assessable wholly to the mortgagor in possession. *Abbott v. Frost*, 185 Mass. 398.

Of Real Estate used by Permission.

A manufacturing corporation maintaining a wall of one of its mill buildings on land within the location of a railroad company outside the limits of the route of the railroad, by permission of the railroad company and of the owner of the fee of the land, is not taxable for the land so used by it. *Hamilton Manuf. Co. v. Lowell*, 185 Mass. 114.

Of Property of Corporation.

Under Pub. Stats., c. 11, § 53 [R. L., c. 12, §§ 58, 59], the machinery of a manufacturing corporation is to be taxed as personal property, and must be valued separately from the land and buildings of the corporation. If the land and buildings are overvalued, the corporation is entitled to an abatement, whether the land, buildings and machinery taken together are overvalued or not. *Hamilton Manuf. Co. v. Lowell*, 185 Mass. 114.

Under Stat. 1889, c. 84 [R. L., c. 12, § 15, Stat. 1902, c. 113], an assessment of a tax on real estate to one holding under a tax deed which is regular on its face and is duly recorded is made to the right person, whether his title is valid or not. *Roberts v. Welsh*, 192 Mass. 278.

A tract of land in a city, about one hundred by one hundred and fifty feet, and having upon it two separate dwelling houses of four tenements each, was taxed to a widow having six minor children. Her husband, father of the children, had owned the land when he died intestate three years before. Since her husband's death she and her children had occupied one of the eight tenements, and the widow had let the other seven in her own name, using the money for the support of the children and for repairs. No dower had been assigned to her, and she had not been appointed guardian. The land was sold for taxes, and the purchaser at the sale mortgaged it. In a suit in equity brought by the heirs of the deceased husband for the cancellation of the mortgage as a cloud upon their title, it was *held*, that the assessment was bad and the tax sale void, and that the plaintiffs were entitled to the relief sought; that the widow could not be regarded as one of the "persons who appeared as record owners" of the estate within Stat. 1888, c. 390, § 56 [R. L., c. 13, § 56], and that she was not "in possession" of the estate within the meaning of Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15]; that she had not disseised her children, who occupied one tenement with her, and, although she let the others in her own name, she was doing so in the children's interest and was occupying the land with the heirs in the way contemplated by Pub. Stats., c. 124, § 13 [R. L., c. 132, § 12], providing for the case of a widow who does not care to have her interest assigned to her. *Whether*, if the widow could have been found to be in possession, such possession under the circumstances of her occupation could have been found to include the land outside the buildings, *quære*. *Kerslake v. Cummings*, 180 Mass. 65.

An interesting decision as to the taxation of land flowed by water and the water-power is the following:—

WELLS, J. The petitioner was liable to be taxed in Windsor for his land lying within that town, and structures upon it. He asks for an abatement on the ground of over-estimate in two respects: 1st, in the number of acres of land; 2d, in the valuation of land and structures.

1. As to the over-estimate in the number of acres: It appears that the list filed by the petitioner gave the amount of land in one parcel as forty-one acres, but failed to give the number of the pond in two other parcels, which were entirely flowed by the pond.

The assessors called the whole sixty-five acres. The agreed facts state the quantity of land as follows: "an area of about fifty-five acres, more or less." We do not think this makes out a case for the petitioner to have an abatement on that ground.

2. The valuation by the assessors was for dam and land, sixty-five acres, \$15,000 aggregate value. The land cost \$2,531, and the dam \$33,770. About half of the land is covered by the pond. The agreed facts state that the land, "while covered by water," and the dam, "independent of its uses for the purposes of a reservoir," are of only nominal value. Upon this statement the petitioner contends that any valuation and tax upon the land so covered, and the dam so used, must necessarily be made and levied upon the water-power. The case of *Boston Manufacturing Co. v. Newton*, 22 Pick. 22, decides that water-power is taxable only as incident to land; and that when used, it is to be regarded as incident to the mills to which it is applied, and not to the dam and pond by which it is created. But it does not decide that the land and structures, by which it is created, are not taxable for their value as such.

The decision in *Lowell v. County Commissioners*, 6 Allen, 131, is that canals used for supplying water-power to mills, and "land adjoining and bordering on the canal, with gate-houses, feeders and mason work," may be taxed upon an estimate which includes the value of unappropriated water-power. So far as the opinion in that case implies that the land and structures occupied for canal purposes might not be taxable at all, if the estimates for the taxes upon the mills had included so large a valuation of water-power as to exhaust the whole productive capacity of the land and structures by which it was furnished, it must be understood with a view to the fact that both subjects of taxation were within the same city. If, in assessing the tax upon the mills, the water-power had been estimated in such a manner as to include the entire value of the land and structures by means of which it was supplied, it would manifestly be double taxation to include them again in the assessment as a separate subject of valuation and tax. There was no diversity of right or jurisdiction in that case which made it necessary to determine whether the canals and lands adjoining them could be taxed to the mill-owners as water-power against a conflicting interest.

By the Gen. Stats., c. 11, § 3 [R. L., c. 12, § 3], "real estate

for the purposes of taxation shall include all lands within this State, and all buildings and other things erected on or affixed to the same." No case has been cited which gives countenance to the position that land and erections upon lands ceased to be separately taxable as real estate, because of their appropriation and use for the purpose of creating and supplying water-power for mills. The value of such structures consists, mainly, it is true, in the adaptation to the production and application of water-power for mills.

But they are capable of being estimated by a reasonable valuation, not dependent upon nor including the worth of the water-power with which they are connected.

Such a valuation is not unlike that which is required to be made of the mills themselves, including the water-wheels, by the Stat. of 1861, c. 167, § 2. This statute requires "such value to be exclusive of land and water-power, and of the machinery used in said buildings."

It would not be supposed that it was intended, by this provision, that the buildings should be estimated according to their value, independent of their use by the application of water-power, or to the value of their materials for removal.

The same statute requires a separate description and valuation of "each and every lot of land assessed." The manner of assessment in detail, provided for by this statute, favors the position of the respondents.

We are satisfied that the land in this case, and the dam erected upon it, are taxable as real estate in Windsor; that the valuation should be made, not subject to the use to which they are for the time appropriated, nor independently of that use, in any sense which excludes it from consideration as a means by which their value is made available, but in the same manner as the mills and water-wheel are to be valued. *Boston Water-Power Company v. Boston*, 9 Met. 199, 204. No part of the value of the water-power, as such, is to be included in the valuation of either; but the capacity of the property for valuable use is not to be excluded from consideration for the reason that it is so limited in the purpose or mode of its use as to be only of nominal value independently of its use in a particular mode or for a particular purpose.

The valuation, in the present case, is such as to give no ground for the supposition that it included any part or value of the water-power; or that it is other than a fair and reasonable estimate of the land and structures erected upon it. The tax, therefore, is rightly assessed, and the petition is accordingly dismissed. *Pingree v. Berkshire*, 102 Mass. 76 (1869).

Since the above decision, the following law has been enacted:—

1872, 306, § 1.

All reservoirs of water, with the dams connected therewith, and the lands under the same, used to maintain a uniform supply of water for mill-power, shall be assessed for the purpose of taxa-

tion in the town or towns where located, at a valuation not exceeding a fair valuation of land of like quality in the immediate vicinity.

This act has been declared unconstitutional. Consequently the law remains as it was prior to its passage.

SUPREME JUDICIAL COURT.

LAW — SEPTEMBER 25, 1875.

INHABITANTS OF CHESHIRE v. COUNTY COMMISSIONERS OF BERKSHIRE.

BERKSHIRE, SEPT. 15-25, 1875.

AMES and DEVENS, JJ, absent.

In 1874 the Adams and Cheshire Reservoir Company — the owner of a reservoir of water, with the land under the same and dams connected therewith, used to maintain a uniform supply of water for mill-power, and liable to taxation therefor in the town of Cheshire — was assessed a tax of nine hundred dollars upon a valuation of sixty thousand dollars. In determining this valuation, the assessors made what was in their judgment a fair cash valuation of the property, and did not assess the tax as required by the Stat. of 1872, c. 306. The reservoir company then applied to the county commissioners for an abatement of the tax, who decided that the assessors should have valued the property as provided in said statute, and abated the tax accordingly.

WELLS, J. This case is presented to the court solely upon the question of the construction and validity of the Stat. of 1872, c. 306, which is as follows: "All reservoirs of water, with the dams connected therewith and the lands under the same, used to maintain a uniform supply of water for mill-power, shall be assessed for the purposes of taxation in the town or towns where located, at a valuation not exceeding a fair valuation of land of like quality in the immediate vicinity."

We are unable to construe this statute as requiring merely that the value of land and structures, appropriated for the purpose of creating and applying water-power for mills, should be apportioned between different towns, in each of which part only of the works is situated, so that the land alone should be taxed in the town where it is situated, and the artificial structures or appliances for creating the power should be taken as included in the estimate of the value of the power itself, and taxed in the same town as the site upon which it is applied and used; nor can we regard it in purpose and effect as providing, by way of classification merely, that such structures and appliances shall be estimated only as incident to and included in the value of the power at the site where it is used and valued, wherever located. *Lowell v. County Commissioners*, 6 Allen, 131. *Pingree v. County Commissioners*, 102 Mass. 76. The terms in which the act is framed forbid such a construction. It makes the town in which the reservoir is situated the place, and the only place, where any tax can be laid on account of the value, as property, of the entire reservoir; thereby excluding it from estimation as incident to, or as an element of value in, that capacity of use which is taxable as power

in connection with the site upon which it is applied to the working of mills. It does not purport to have for its object the apportionment of the rights of taxation between different towns. Its terms apply equally to reservoirs which are in the same town with the mills for whose supply they are maintained, as to those which are in other towns; and whether held by the same parties and in the same right as the mills and mill-site, or by an entirely separate and independent ownership. It is not a statute of exemption. Neither its title nor its provisions indicate any consideration of public service, or relief required by the public welfare, which might justify such an exemption, or lead to the supposition that it was so intended; nor is any such consideration to be implied from the character and use of the property. We need not determine, therefore, whether, if it were to be construed as an exemption, it could be sustained as such.

Regarding the statute, then, as declaring the entire reservoir to be a distinct and separate subject of valuation for the purposes of general taxation, and requiring that valuation to be made upon a basis which excludes all increase of value by reason of the improvements or additions made thereon for the construction and maintenance of the reservoir, however valuable or costly, the question is whether it conflicts with the constitutional provision which relates to the exercise of the taxing power by the Legislature.

That provision requires that all taxes levied under its authority be "proportional and reasonable," and forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment, or indirectly through arbitrary and unequal methods of valuation. *Portland Bank v. Apthorp*, 12 Mass. 252. *Commonwealth v. People's Savings Bank*, 5 Allen, 428, 431. *Commonwealth v. Hamilton Manufacturing Co.*, 12 Allen, 298, 301. Practically it is impossible to secure exact equality or proportion in the imposition of taxes or distribution of public burdens requiring taxation. The test, in all legislative enactments affecting taxation, is that their aim be towards that result, by approximation at least. No enactment respecting taxation under this clause conforms to its provisions, if it directly and necessarily tends to disproportion in the assessment. It appears to us that the practical operation of this statute, construed as we have found ourselves compelled to construe its terms, is directly and necessarily to produce disproportion, to a greater or less extent, in the levy of all taxes based upon valuations which include such property as that to which it applies. That being its necessary tendency, it is immaterial whether the effect upon the general distribution of the tax be great or small; it is equally in violation of the Constitution, and therefore not within the legitimate authority of the Legislature. Consequently the abatement ordered by the county commissioners was erroneously made, and the writ of *certiorari* must be issued. *Cheshire v. County Commissioners*, 118 Mass. 386.

SUPREME JUDICIAL COURT.

LAW — NOVEMBER, 1878.

CITY OF FALL RIVER v. COUNTY COMMISSIONERS OF BRISTOL.

Petition for a writ of *certiorari* to quash the proceedings of the county commissioners of Bristol in abating a tax assessed by the petitioner in 1876 upon the Watuppa Reservoir Company. Hearing upon the petition and answer, before Ames, J., who reserved the case for the consideration of the full court. The facts appear in the opinion.

M. Reed for the petitioner.

J. M. Morton, Jr., for the respondents.

MORTON, J. It appears from the return of the county commissioners that the tax in question was assessed upon a reservoir company under the Stat. of 1872, c. 306, in the terms following: "Reservoir of water used to maintain a uniform supply of water for mill purposes, with the dam connected therewith, and the land under the same," and that this was the only tax assessed by the city of Fall River upon said reservoir company during the year 1876. In *Cheshire v. County Commissioners*, 118 Mass. 386, it was held that this statute was unconstitutional and void. It necessarily follows that the tax in question was illegal.

The claim of the petitioner that this tax may be upheld because the reservoir company was taxable for a part of its property, cannot be sustained. One sufficient answer is, that it had no property which was liable to taxation. It did not own the dam, nor any of the land covered by the pond. The dam was built at the outlet of the Watuppa ponds, which were great ponds, on the land of the Troy Cotton and Woolen Manufactory; and the only interest in any land which the reservoir company had was the right to flow the lands surrounding the ponds to a point two feet above the old dam. This is merely an easement in the land, which cannot be taxed independently. It forms part of the water-power which is taxed in connection with the mills, as enhancing their value.

The reservoir company, being a corporation having a capital stock divided into shares, was not liable to be taxed for the cash in its treasury, that being personal property which enters into the value of the shares. *Boston and Sandwich Glass Co. v. Boston*, 4 Met. 181.

For these reasons, without discussing others, we are of opinion that the decision of the commissioners abating the tax was correct. *Petition dismissed*. *Fall River v. County Commissioners of Bristol*, 125 Mass. 567.

A water company acquired title in and to the waters of a pond, and to a permanent dam and sluiceway connected therewith, and took possession thereof. *Held*, that even if the title was to an easement only, a tax was properly assessed to it for the dam and sluiceway as real estate, and that its sole remedy for any excess was by an application for an abatement. *Flax Pond Water Company v. City of Lynn*, 147 Mass. 31.

In valuing the real property of a manufacturing corporation

for taxation, when the land must be valued exclusively of the buildings and the buildings exclusively of the land, it is erroneous to value the land as if the buildings were removed from it and then to value the buildings as if they were to remain upon it, if the sum of the values thus obtained is greater than the fair cash value of the land and buildings taken together in the condition they were in at the time to which the valuation relates. *Tremont & Suffolk Mills v. Lowell*, 163 Mass. 283.

Buildings.

R. L., c. 12, § 3. The case of *Flanders v. Cross*, 10 Cush. 514, leaves in doubt the question as to whether a wooden building belonging to A, but standing on land of B, is to be considered for the purpose of taxation as real or as personal estate. Since that decision a case in point has been determined by the court as follows:—

THOMAS MILLIGAN v. OTIS DRURY, TRUSTEE.

SUFFOLK, February 23, 1881.

A building resting on sills upon the ground is taxable as real estate under the Gen. Stats., c. 11, § 3 [R. L., c. 12, § 3], although by agreement between a lessor and lessee of the land the latter has the right to remove the building at the expiration of the lease. The opinion of the court follows:—

MORTON, J. The lease to the plaintiff provides that he shall pay the rent stipulated therein "and all taxes and duties levied and to be levied thereon during the term." It also provides that, upon the payment of rent and taxes aforementioned upon the said premises, "said lessee shall have the privilege or right to remove any and all buildings erected by himself upon said premises at the expiration of the aforesaid lease."

Under these provisions the plaintiff has no right to remove the buildings erected by him, and to treat them as personal property, except upon payment of all the rent and taxes due under the lease. In other words, the payment by him of the rent and taxes is a condition precedent to his right to sever the buildings, and make them his personal property.

It appears by the statement of facts, that the assessors of Boston in the years 1877 and 1878 assessed to the plaintiff, as the lessee and occupant, the land and buildings as real estate. The statute provides that "real estate for the purposes of taxation shall include all lands within this State, and all buildings and other things erected on or affixed to the same." Gen Stats., c. 11, § 3 [R. L., c. 12, § 3].

The assessors were not obliged to inquire into the private contracts between the parties, but had the right to do as they did, and assess together as real estate the land and the buildings affixed thereto. They having done so, it was the duty of the plaintiff under the lease to pay the taxes. The defendant was in no fault, and he had no remedy, except to pay the taxes, or to protect himself by buying in the estate at the tax sale.

Upon the facts agreed, therefore, it appears that the plaintiff, having neglected and refused to pay the taxes, has failed to perform the condition upon which alone he was to have the right to remove the buildings erected by him upon the leased premises. The defendant's refusal to permit the plaintiff to remove them was, therefore, not a conversion for which he can be held liable in this action.

Judgment for defendant affirmed. *Milligan v. Drury*, 130 Mass. 428.

A building affixed to land cannot be taxed as "real estate" apart from the land to which it is attached.

If such a building is owned separately from the land as personal property, it cannot be taxed as real estate to the owner so as to create a lien; and if such owner before paying the tax sells it, the purchaser will not succeed to any personal liability of the owner to pay the tax, but upon paying it after a protest in writing may recover it back. *McGee v. City of Salem*, 149 Mass. 238.

The owner of a parcel of land died, leaving a widow and an heir-at-law. Dower was not assigned to the widow, and she, acting as agent for the heir-at-law, let the land to a tenant. While the tenant was in sole occupation of the land a tax upon it was assessed to the widow. *Held*, that the widow was not the person "in possession" within the Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15]; and that the assessment was invalid. *Lynde v. Brown*, 143 Mass. 337.

Taxes on real estate must be assessed, under the Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15], to the living owners of real estate; and an assessment to a person deceased, who owned such real estate at his death, is illegal and void. *Sawyer v. Mackie*, 149 Mass. 269.

A parsonage, erected for a religious society on its land, and near its church edifice, for the use of its ministers as a dwelling-house exclusively, free of rent, is not, under the Pub. Stats., c. 11, § 5, cls. 3, 7 [R. L., c. 12, § 5, cls. 3, 7], exempt from taxation. *Third Congregational Society of Springfield v. Springfield*, 147 Mass. 396.

A railroad company, as required by the Stat. of 1884, c. 157, § 1, discontinued its location over certain land within the limits of its road, used by it for station purposes, and, as authorized by § 2, took another parcel of land, a narrow strip of which was within its original location, but had been sold by it, outside the limits of its road "for station purposes, and for tracks and yard room, to be used in connection therewith." *Held*, that the whole of the parcel was taken for station purposes, and under the Pub. Stats., c. 112, § 92 [R. L., c. 111, § 96], and the Stat. of 1884, c. 157, § 5, was subject to taxation. *Nor. & Wor. R.R. Co. v. Com'rs*, 151 Mass. 69.

If a husband and wife with their children live together on the wife's real estate, the presumption is that the husband is in possession as head of the family and as her licensee; and the taxes thereon are properly assessed to him under the Pub. Stats., c. 11, § 13 [R. L., c. 12, § 15], which provide for the assessment of taxes to the owner or person in possession of real estate. C.

Allen and Knowlton, JJ., dissenting. *Southworth v. Edmands*, 152 Mass. 203.

If a testator's real estate has duly vested in his devisees, who are not his heirs, by the probate and allowance of his will, taxes thereon are not lawfully assessable to the heirs of the testator under the Pub. Stats., c. 11, § 18 [R. L., c. 12, § 21], which provide for such assessment to the heirs or devisees of a deceased person, until notice is given of the division of the estate and of their several names; and sales thereafter of such real estate for the non-payment of taxes assessed to such heirs are invalid. *Tobin v. Gillespie*, 152 Mass. 219.

The property of a county is exempt from taxation only when actually appropriated to public uses.

Real estate purchased by a county for enlarging a jail and jail grounds is taxable, while let for private purposes and a source of income to the county, by the city within which it is situated. *Inhabitants of Essex Co. v. Salem*, 153 Mass. 141.

If a corporation organized "for the purpose of diffusing knowledge and promoting intellectual improvement" in a certain city, occupies a hall in a building owned by it for a few evenings only each winter for a course of lectures on literary and scientific subjects, and during the rest of the year lets the hall for various purposes, the estate is not exempt from taxation under the Pub. Stats., c. 11, § 5, cl. 3 [R. L., c. 12, § 5, cl. 3], although the income derived from letting the hall is devoted exclusively to making provision for such courses of lectures. *Salem Lyceum v. Salem*, 154 Mass. 15.

See EXEMPTION FROM TAXATION; CORPORATIONS; RELIGIOUS SOCIETIES; TRUST PROPERTY. *Wesleyan Academy v. Wilbraham*, 99 Mass. 599. *Mass. Gen. Hospital v. Somerville*, 101 Mass. 319. *Jennings v. Collins*, 99 Mass. 29.

RELIGIOUS SOCIETIES.

R. L., c. 12, § 5, cl. 7, § 25; c. 36, § 25.

See *Wesleyan Academy v. Wilbraham*, 99 Mass. 599 (1868).

RESERVOIRS.

See REAL ESTATE.

SCHOOL DISTRICT.

The school district system in this Commonwealth was abolished by Acts of 1882, c. 219.

See DISTRICT TAXES.

SHIPS OR VESSELS.

Partnerships.

R. L., c. 12, § 28.

A tax was assessed by a city on May 1, to five persons jointly as owners or trustees of a ship. The legal title to the ship was on that day in these persons in trust to complete the ship and sell her for the benefit of themselves and others having claims against her. All the trustees, on that day, did business in the city, but were not partners, and only three of them resided there. The vessel was at a wharf in the city, at which the trustees had hired a berth, with the right to pass over the wharf to the ship and to use the part of the wharf near the ship for storage. *Held*, that, although the three resident trustees were liable to taxation for their interest in the vessel, they could not under the Gen. Stats., c. 11, § 12 [R. L., c. 12, § 23], be jointly taxed with the other trustees; and that the tax was illegal and void. *Stinson v. Boston*, 125 Mass. 348.

Ships and Vessels engaged in the Foreign Carrying Trade.

R. L., c. 12, §§ 7-9.

STATE TAX.

See TAXES; WARRANTS; CORPORATIONS, *Taxation of Shares in*; POLL TAX.

TAXES.

Corporation.

Under R. L., c. 14, each town's proportion of these taxes is allowed it in settlement of its State tax.

Highway.

Abolished by Acts of 1871, c. 298. See HIGHWAYS.

Interest on Certain.

See INTEREST.

*Laws Regulating Taxation.**On Real Estate.*

Taxes on lands are an encumbrance thereon from the date of their assessment. *Cochran v. Guild*, 106 Mass. 29. See *Hill v. Bacon*, 110 Mass. 387.

Lien, R. L., c. 13, § 35. *Coburn v. Litchfield*, 132 Mass. 451.

Poll.

See POLLS; OMITTED ESTATES AND POLLS.

Priority of Claim for.

R. L., c. 163, § 118.

Reassessed, Collection of.

When the original assessment of a tax is valid its reassessment is void. *Oakham v. Hall*, 112 Mass. 535.

The following important decision was given by the Supreme Court of this State in the case of *Hubbard v. Garfield*, 102 Mass. 72 (1869):—

Opinion of the Court.

COLT, J. The defendant, as collector of taxes in the town of Monterey, for the year 1866, justifies the arrest of the plaintiff under a warrant, which, with the accompanying tax list, was committed to him by the assessors of that town for that purpose. It appears that the tax against the plaintiff, upon which the arrest was made, was originally placed on the list to her husband, Francis A. Hubbard, and was abated by the assessors of the following year, not the same persons who constituted the previous board. The tax so abated was then assessed by the board of 1867 to the plaintiff, with the exception of that part of it which was poll tax, and, in the presence of the defendant, was added to the tax list then in his hands for collection, without any other change made in the list or warrant.

The judge, upon these facts, ruled that the reassessment of the tax was invalid, and the arrest illegal.

It is not necessary to the complete justification of the defendant under his warrant, that the validity and regularity of the proceedings of the assessors in all respects relating to the abatement and reassessment should appear. The collector is certainly entitled to the full protection of the rule which regulates the liability of ministerial officers in the service of process. *Chase v. Ingalls*, 97 Mass. 524.

And where the assessors have jurisdiction of the subject-matter, and the process is regular on its face, he is not bound to examine

into the legality of the previous proceedings, and cannot be affected by the existence of any fact not disclosed which deprives them of jurisdiction in that particular case.

Upon a careful consideration of those statutes, mainly to be found in the Gen. Stats., c. 11 [R. L., c. 12], which provide for the election and define the duties of the board of assessors, we are of the opinion that the warrant and tax list under which this arrest was made furnish a sufficient justification of the defendant.

The provisions of section 53 [now R. L., c. 12, § 86] are broad in their terms: "Every tax except a poll tax, which is invalid, by reason of any error or irregularity in the assessment, which has not been paid or which has been recovered back, may be reassessed by the assessors, for the time being, to the just amount to which, and upon the estate or to the person to whom, it ought at first to have been assessed."

The reassessment may be made after the expiration of the year by an entirely new board of assessors.

It extends to a tax which has been paid and recovered back by process of law, and which would usually carry the time far beyond the expiration of the year.

It may be used to correct an error which affects the entire list, as in the case of *Goodrich v. Lunenburg*, 9 Grd'y, 38, the decision of which manifestly occasioned the statute provision in question.

Or to cure an error discovered in any one or more of the individual taxes.

It reaches every description of error that may arise, either in regard to amount or estate or person.

There was authority enough, therefore, in the assessors to reassess the tax in question to the plaintiff.

The only difficult question is, whether they legally exercised it in this instance.

It is obvious that the reassessment, whenever made, by whichever board of assessors, must be based upon the valuation of the year in which the tax was first assessed. It must be made in pursuance of the original vote of the town, and the warrants of the State and county requiring it; and all corrections must have reference to them.

It is insisted by the plaintiff, that, under the statute, like proceedings must be had as are required in the original assessment; that the reassessed tax list, with a warrant specifying a reason for their action, must be committed by the assessors to the collector for the time being.

If the error or irregularity in any given case were such as to invalidate the entire assessment, it would seem to be indispensable that an entire new list should be prepared, and should be accompanied with a new warrant.

But there is not the same necessity where the error is in the individual assessment, and there is nothing in the law which expressly requires it. It is to be borne in mind that the process under which the collector acts is in some respects peculiar and anomalous.

The warrant refers to the tax list which accompanies it as one

of the documents constituting the collector's authority. If the warrant is lost or destroyed, the assessors may issue a new one, which shall have the same force and effect as the original, and, if issued by a new board, must have reference to the same original list.

The tax list is liable to be changed, from time to time, while in the collector's hands, by abatements and, what is more to the point, by additions thereto.

At the time when the power of reassessment under this statute was given, new names of tax payers were required to be added in certain cases of omission.

By section 50, persons who were liable to be taxed at the last annual assessment, and who applied seven days before an election, were to be taxed upon their polls and estates in the same manner as they would have been originally, with the further provision that the taxes so assessed be entered in the tax list of the collector, to be collected and paid over as specified in his warrant.

Thus the written warrant and authority of the collector, after it had been delivered to him for execution, was subject to be changed and added to by the board from which it issued, or in case of the death, removal or disability of any of its members, by their successors in office.

The last-cited section was indeed repealed by the Stat. of 1865, c. 206, § 2, and similar provisions were made by the Stat. of 1868, c. 211, § 2, and 1869, c. 443.

The subsequent appeal does not affect this discussion, which relates to the interpretation to be given to the law at the time of its enactment.

The intention of the law is to be judged of with reference to the nature of the proceedings which it affects, and the character given to them by previous legislation; and, with the aid thus derived, it is apparent that the assessors may add new names to the collector's list, as at least one legal mode of making the reassessment.

This mode would be less open to objection where the addition is made during the year by the same assessors, and before the expiration of the collector's term of office.

But the assessors constitute a tribunal with powers which imply a continued and uninterrupted existence, not limited to the individuals who at any given time compose it. And, if this were otherwise, the law in question expressly gives the power of reassessment to the assessors for the time being.

In regard to the collector, although his term of office has expired, he still has the power to complete the collection of taxes committed to him (Gen. Stats., c. 12, § 2) [R. L., c. 13, § 3]; and this, of course, embraces those which have been legally added to the list in his hand, and which, under the peculiar process, relate back to the original warrant, and are brought within its authority.

By these steps we arrive at the conclusion, that the assessment made to the plaintiff was within the jurisdiction of the assessors of 1867, and that the warrant for its collection in the defendant's hands was regular on its face.

This is far enough to go for defendant's justification. He is not called on to inquire whether the assessors erred in judgment as to the plaintiff's liability, or proceeded irregularly in any preliminary to the act of assessment. *Cheever v. Merritt*, 5 Allen, 565. *People v. Warren*, 5 Hill, 440. *Watson v. Watson*, 9 Conn. 140. *Stoddard v. Tarbell*, 20 Vt. 397.

If it be said that this construction gives to this class of town officers great power over the persons and property of the citizens, the answer is, that it is no more than must necessarily be had for the discharge of the important and difficult duties connected with taxation and no more than had been exercised from the earliest times under existing laws. The security is to be found in the integrity and fidelity of these officers, and not in a too strict construction of the statute under which they act.

Exceptions sustained. *Hubbard v. Garfield*, 102 Mass. 72. Section 80 of c. 11, Pub. Stats. [R. L., c. 12, § 87], alters the law of this case in some respects.

Certain mortgaged real estate, how taxable. R. L., c. 12, §§ 15-18.

TAX SALES.

R. L., c. 13.

A sale cannot be made of an undivided part of an estate, and the sale is void if the advertisement states that sale of an undivided part will be made.

In this connection the following case is of importance to collectors:—

SUPREME JUDICIAL COURT.

LAW—OCTOBER, 1877.

SARAH E. WALL v. CALEB A. WALL.

Opinion of the Court.

MORTON, J. The tenant's title is derived from a sale and conveyance of the premises by the collector of taxes of the city of Worcester. The demandant makes several objections to the validity of this sale. We are satisfied that one of these objections must prevail.

The statute requires that the collector shall give notice of the time and place of sale of real estate taken for taxes by an advertisement, to be published in a newspaper of the county in which such estate lies, and "that the advertisement shall contain a substantially accurate description of the several rights, lots or divisions of the estate to be sold, the amount of tax assessed on each, the names of all owners known to the collector and the taxes assessed on their respective lands. Gen. Stats., c. 12, §§ 28-29 [R. L., c. 13, § 36]. It has been held that these requirements of the statute are not merely directory to the collector, but that they are conditions precedent to the validity of the sale, and that, unless they are strictly followed, the sale is invalid.

Thus, in *Alexander v. Pitts*, 7 Cush. 503, it was held that as the tax assessed, for non-payment of which the estate was sold, was three dollars and thirty cents, and the advertisement stated the amount of the tax to be four dollars and twelve cents, the sale was void. See also *Farnum v. Buffum*, 4 Cush. 260.

The collector's advertisement in this case gives notice to "the owners and occupants of the following described parcels of real estate" that the taxes on said estate assessed for the year 1872 remained unpaid, and "that said parcels of real estate, or such undivided portions thereof as may be necessary, will be offered for sale at public auction" at the place and time named.

A collector, by the Gen. Stats., c. 12, § 33 [R. L., c. 13, § 41], is authorized, if the taxes are not paid, to sell the whole land, or, if it is capable of division, any part of it, or the rents and profits of the whole estate. But he is nowhere given any authority to sell any undivided interest in the land, so as to constitute the purchaser a tenant in common with the owner. The advertisement in this case gives notice to the owner and others interested that the collector intends to sell either the whole of the land of Sarah Wall, or such undivided portions thereof as may be necessary. As he had no right to sell any undivided portion of the land, it was not a due execution of the statute power, and therefore no title passed by the deed. *Crowell v. Goodwin*, 3 Allen, 535. This makes it unnecessary to discuss the other objections to the sale made by the demandants. Judgment for the demandant. *Wall v. Wall*, 124 Mass. 65.

After this decision the Stat. of 1879, c. 229, was passed to make valid certain sales affected by the decision. That statute was declared by the court to be unconstitutional in the case of *Forster v. Forster*, 129 Mass. 559 (1880).

A collector's sale of several distinct and separate lots of land for the non-payment of taxes was held to be for one integral price, and therefore void. *Barnes v. Boardman*, 149 Mass. 106.

A sale of land by a collector of taxes, more than two years after a warrant for the collection of a tax thereon was committed to his predecessor, is void although within two years after the warrant was committed to the collector making the sale, if the land was alienated by the owner after the tax was assessed to him, and before the sale; and the grantee, if in possession of the land, may maintain a bill in equity against the purchaser, to remove a cloud from his title, when the purchaser has caused his deed from the collector to be recorded, refuses to release to the plaintiff and claims to be the owner of the land.

SUPREME JUDICIAL COURT.

EQUITY—APRIL, 1878.

GEORGE D. RUSSELL v. JAMES DESHON.

Opinion of the Court.

SOULE, J. By the Gen. Stats., c. 11, § 38 [R. L., c. 12, § 41], assessors are required to commit the tax list to the collector within a reasonable time. By c. 12, § 22 [R. L., c. 13, § 35], it is provided that "taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector; and may be levied by sale thereof if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the meantime." The effect of this section is to make the tax a lien or encumbrance on the estate until the end of the two years, and no longer, although the tax may be afterward levied by sale of the land, if it has not been alienated by the person taxed. *Kelso v. Boston*, 120 Mass. 297.

It is evident that the purpose of a lien limited to two years was to give municipal officers abundant time in which to collect the taxes assessed on land, and no less to fix a time when the land should be released from an encumbrance created by the law for the public advantage. We are of opinion that the two years, at the expiration of which the lien is lost, begin to run when the tax is first committed to a collector. Any other construction of the statute would leave it quite uncertain when the lien would cease to exist. If a new lien, to continue for two years, were created whenever, by reason of the death or removal of a collector, the tax list is committed to a temporary collector, it is obvious that estates might be held under encumbrance for an indefinitely long period. We are not aware of any reason which makes this desirable in behalf of the public, and it would be manifestly inconvenient for the individual citizens.

The plaintiff's land was not sold by the collector until more than two years after the tax was committed to his predecessor in office. After the tax was assessed the land was alienated by the owner to whom it was taxed, and by his grantee, and at length was conveyed to the plaintiff before the collector sold it. The collector's sale was therefore void, and his deed to the defendant conveyed no valid title. But, as the defendant had caused the deed to be recorded, and refuses to release to the plaintiff, and claims that he owns the premises, the collector's deed to him creates a cloud on the plaintiff's title. The plaintiff, having continued in possession of the premises since he took his deed in November, 1875, cannot try his title by writ of entry, and can maintain a bill in equity to remove the cloud from his title. *Clauston v. Shearer*, 99 Mass. 209.

The demurrer must be overruled; and the plaintiff is entitled to a deed of release from the defendant and to recover his costs. *Decree accordingly.* *Russell v. Deshon*, 124 Mass. 342.

An addition of more than the five per cent. overlay allowed by the statute (Pub. Stats., c. 11, § 49) [now R. L., c. 12, § 55], will render a tax invalid to the extent of such excess. (For an exception to this rule, see Stats., 1887, c. 226.) But such excess, even if it should appear on the face of the warrant, will not defeat the collector's justification of his acts in distraining and selling under authority of the warrant. The course open to the person assessed in such case is to pay under protest, and sue the town or district to recover back the illegal excess.

A collector distrained nine cows for a personal property tax, and sold all of them separately, although enough was realized from the sale of seven to cover tax and all expenses. It was decided that the sale of the remaining two was a wrongful sale, which entitled the original owner to recover the value of the two cows.

SUPREME JUDICIAL COURT.

BERKSHIRE, SEPTEMBER, 1878.

HENRY D. CONE *v.* SHELDON E. FOREST.

Opinion of the Court.

COLT, J. This is an action of tort to recover the value of nine cows alleged to have been converted by the defendant to his own use. The defendant admits that he seized and sold the cows, and justifies his acts under a warrant issued to him as collector of the town of Great Barrington by the assessors of that town, directing him to collect a tax voted by one of the school districts of that town.

At the trial it appeared, by an inspection of the warrant, that to the amount voted by the district, namely, \$1,800.11, was added the sum of \$115.16 "for the overlaying on said tax."

The plaintiff claimed that, as the assessors added to the amount of the tax a sum exceeding five per cent. thereof, the assessment was illegal, and the warrant furnished no justification to the defendant. The statute provides that the assessors "may add to the amount of a tax to be assessed such sum, not exceeding five per cent. thereof, as any fractional division of the amount may render convenient in the apportionment." Gen. Stats., c. 11, § 32 [R. L., c. 12, § 55]. This provision substantially has been in force since the year 1785. Rev. Stats., c. 7, § 28. Stat. 1785, c. 50, § 11. Prior to that year it had been the common practice of the assessors either to suit their convenience in calculating the apportionment of the tax, or, with a view to meet abatements or defalcations and mistakes, to add to the amount of the tax voted a sum sufficient in their judgment to answer these purposes. *Colman v. Anderson*, 10 Mass. 105. But this was done without any statute authority; and in order to remove doubts as to the power of the assessors to do this, and at the same time to limit their discretion, the statute of 1785 was passed. It is clear that

under the law as it now exists assessors have no right to add to the amount of the tax voted more than five per cent. thereof; and that, if they do so, their assessment for the amount of the excess is illegal.

It will not be necessary to consider whether this provision of the statute applies equally to school-district taxes; for we are of opinion that the collector is protected by his warrant, notwithstanding the illegality of the assessment.

He is entitled to the benefits which the law affords to ministerial officers in the service of process issued by courts of competent jurisdiction, and is not bound to examine into the legality of previous proceedings. *Hubbard v. Garfield*, 102 Mass. 72. *Underwood v. Robinson*, 106 Mass. 296. *Rawson v. Spencer*, 113 Mass. 40.

Under the provisions of the Gen. Stats., c. 11, § 54, and c. 12, § 56 [R. L., c. 12, § 91; c. 13, § 86], the illegality of this assessment, even if apparent on the face of the warrant, does not operate to defeat the defendant's justification. These provisions were first enacted in the statute of 1859, c. 118. That act was probably passed in consequence of the decision in *Goodrich v. Lunenburg*, 9 Gray, 38, in which it was held that an error of the assessors in not assessing one-sixth of the State tax upon the polls vitiated the assessment, and that the plaintiff could recover the whole tax in a suit against the town. The fourth section of the statute of 1859 provides that "whenever by any erroneous or illegal assessment, or apportionment of taxation, any party is assessed more or less than his due and legal proportion, such tax and assessment shall be void, only to the extent of the illegal excess of taxation, whenever such exists; and no party shall recover, in any suit or process based upon such error or illegality, greater damages than the amount of such excess."

In the revision of the following year these provisions were separated, and are found, with slight changes of phraseology, in the eleventh and twelfth chapters of the Gen. Stats. cited above.

But we see no reason to suppose that the Legislature intended any change of the law.

The defendant is entitled to the protection afforded by these provisions.

The excess in the overlaying was within the meaning of the statutes an "erroneous or illegal assessment or apportionment," by which the plaintiff was assessed more than his due proportion.

The assessors had jurisdiction of the subject-matter; they acted under the vote of a legally constituted school district; the plaintiff was liable to assessment upon his property for the amount voted; all the proceedings were regular, with the single exception named.

The purpose of the statute of 1859 was to prevent the embarrassment and delay in the collection of taxes caused by errors of assessment or apportionment, where, as in *Goodrich v. Lunenburg*, the extent of the error and the amount of the illegal excess could be ascertained.

It is evident, also, that in order to give full force to its provisions, the collector must be protected in the collection of the

whole tax assessed. The declaration of the statute that no sale, contract or levy shall be avoided by reason of any such error or irregularity implies this, and gives validity to the levy and sale. The collector is not required to correct errors of this description in the assessment. The sale cannot therefore be avoided either in whole or in part. The plaintiff is left to his remedy against the school district for the illegal excess.

The language admits of no other interpretation. In *Shaw v. Becket*, 7 Cush. 442, it was decided that a party of whom a tax illegally assessed had been collected by distress, could recover of the town only the amount of the tax, with interest, and not the surplus value of the property sold, nor the cost of the distress. Although in that case there was no remedy against the collector, for the value of the property or the expenses incurred, because his warrant was sufficient authority for him; nor against the assessors, because by the statute they are exonerated from all liability, except when acting with want of fidelity and integrity. We adopt the language of the court there used as equally applicable to this case. The rule will be found not to be so unreasonable as may at first be imagined. The levy and sale can only take place after notice of the tax, and demand of the payment of the same. The party has always the opportunity before any expense is incurred to avoid the same wholly by payment of the tax. A payment thus made to a collector, clothed with authority to enforce a levy on the person or property, is not a voluntary payment that cannot be recovered back, but at once lays the foundation for an action against the town, a party always solvent, and against whom an execution can always be satisfied.

It is only, therefore, for a party denying the validity of a tax to pay the same if demanded by the collector, and the payment insisted upon, and, having done so, to institute his suit against the town to recover back the same. . . . "It is to be borne in mind that no such demand can be made for a tax, or necessity exists for paying an illegal one except when such tax has been assessed by sworn officers of the law, and under all the forms of law."

In *Loud v. Charlestown*, 99 Mass. 208, where reference was had to the provision by which assessors are relieved from legal responsibility for an illegal assessment, and to the very provisions we are now considering, it was declared that the Legislature, in limiting and regulating the remedy, has regarded the remedy against the town as adequate and complete, having reference to the necessity of a prompt assessment and collection of taxes for the maintenance of government.

It follows that the defendant in this case, committed no trespass in distraining the plaintiff's cattle under an insufficient warrant. The warrant in his hands was valid, notwithstanding the excess in overlaying. If the plaintiff wished to recover his property, and prevent the cost and expense of a sale, he had only to pay his tax to the collector under protest, and recover of the town the illegal excess. If it be urged that the previous provision for the reassessment of taxes, which are invalid by reason of any error or irregularity in the assessment (Gen. Stats., c. 11, § 53)

[R. L., c. 12, § 86], is inconsistent with the construction here given, the answer is that the provisions of section 53 are all satisfied by applying them to cases where a party is assessed for less than his due proportion, or when the tax is assessed to the wrong person, or upon the wrong estate; and do not imply that there is any necessity for a reassessment of a tax like this, which is more than the due proportion, and which when paid to the town or district cannot be wholly recovered back.

The remaining question is whether the defendant became a trespasser by selling more of the property distrained than was necessary to pay the tax and all charges, and if so, to what extent he is to be treated as a trespasser. If a person refuses or neglects to pay his tax, the collector is required to levy the same by distress, or seizure and sale of his goods. The goods are to be kept by him, at the expense of the owner at least four days, and then sold at public auction; and, if sold for more than the tax, and all charges, the collector is required to return the surplus to the owner upon demand, with an account in writing of the sale and charges. Gen. Stats., c. 12, §§ 7, 8, 12 [R. L., c. 13, §§ 20, 21, 25]. The provisions are minute, but they do not authorize or require the return of any property once taken. The surplus in cash is to be returned on demand of the tax payer. The proceedings, however, in this respect are to be governed by common-law rules, which control the right to distrain goods for rent or taxes. Blackstone says that goods distrained are for a time only a pledge in the hands of the distrainers, which they are bound, by an implied contract in law, to restore to the owner, on payment of the debt and expenses, before the time of sale; or when sold to render back the overplus. 2 Bl. Com. 452. It is well settled that an officer is answerable in trover for property sold on execution, after he has realized money sufficient to satisfy his writ. *Stead v. Gascoigne*, 8 Taunton, 527. *Batcheller v. Wyse*, 4 M. & Sc. 552. *Aldrich v. Constable*, 62 B. 370. *Seekins v. Goodale*, 61 Maine, 400. *Wolcott v. Root*, 2 Allen, 194.

It appears, from the report in this case, that the cows here distrained were sold separately, for the prices specified in the defendant's return; and that the sale of the first seven produced a sum sufficient to pay the full amount of the tax, cost of distraint and the defendant's fees, and that this was known to the defendant at the time. It was the duty of the defendant thereupon to return, or to offer to return, the remaining cows.

His act in proceeding to sell the same was a wrongful conversion of the property for which he is liable in this action, but which does not render him a trespasser *ab initio*. *Seekins v. Goodale*, above cited.

Judgment must therefore be rendered in favor of the plaintiff for the value of the two cows, as found by the jury. *Cone v. Forest*, 126 Mass. 97.

A sale of land for non-payment of taxes, if valid, creates a title paramount to any existing estate therein; and such title becomes absolute by the lapse of two years. *Langley v. Chapin*, 134 Mass. 82.

A sale of land under an advertisement of a collector of taxes,

which offers for sale "said parcels of real estate, or such undivided portions of them as may be necessary," is invalid. *Sanford v. Sanford*, 135 Mass. 314.

An advertisement of a sale of a parcel of land taken for a tax, which incorrectly states the year for which the tax is assessed, does not comply with the Gen. Stats., c. 12, § 20 [R. L., c. 13, § 38]; and is fatally defective, although it states correctly the amount of the tax assessed. *Knowlton v. Moore*, 136 Mass. 32.

The provision in the Gen. Stats., c. 12, § 35 [R. L., c. 13, § 43], that the collector's deed of land sold for the non-payment of a tax shall state "the place of residence of the grantee," is not merely directory; and a deed which omits such a statement is fatally defective. *Ib.*

An action on the Gen. Stats., c. 12, § 40 [R. L., c. 13, § 63], by the collector of taxes of a city, against a mortgagee of land who has entered thereon and foreclosed his mortgage, after the lien created by section 22 has expired, for the amount of taxes assessed upon the land to the mortgagor in possession, cannot be maintained. *Sherwin v. Boston Five Cents Savings Bank*, 137 Mass. 444.

After notice of a tax sale of mortgaged real estate to take place on a certain day has been given, an entry of the mortgagee for the purpose of foreclosure under R. L., c. 187, § 1, and a subsequent sale under a power of sale in the mortgage, do not operate as an alienation of the property or in any way affect the rights of the purchaser at the tax sale. *Abbott v. Frost*, 185 Mass. 398.

A sale of mortgaged real estate for non-payment of taxes on the whole property, legally assessed to the mortgagor alone, if the statutory requirements have been complied with, passes to the grantee of the collector an absolute title to the whole estate freed from the mortgage and all other incumbrances, subject only to the right of redemption given by R. L., c. 13, § 58. *Abbott v. Frost*, 185 Mass. 398.

A deed of a collector of taxes recited that "no person has appeared to discharge said tax," and that the collector "has demanded the same of S., the reported owner of said real estate;" but the deed did not state that fourteen days elapsed after demand before advertising the premises for sale, or that the tax was not paid within fourteen days after the demand. *Held*, that under the Gen. Stats., c. 12, §§ 22, 35, the deed was void. *Langdon v. Stewart*, 142 Mass. 576.

A tax sale and the deed given thereunder are not invalidated because an initial is omitted in the name of the owner of the land sold, if the owner was as well known by the name used as by his true name. *Lancy v. Snow*, 180 Mass. 411.

A description of real estate in a tax deed giving the front line of a lot on a city street as "about sixty-three feet," and giving the point of beginning as "about one hundred and twelve feet" from another street, whereas the lot taxed and intended to be sold was sixty-five feet wide on the street and the point of beginning was one hundred and ten feet from the other street, makes the sale invalid and the deed void, the collector having

no authority to sell less than the whole of the lot. *Roberts v. Welsh*, 192 Mass. 278.

A description of real estate in a tax deed which is correct except in the use of the word "about" before two of the measurements which are in fact exact is not rendered uncertain or incorrect by the use of this word. *Roberts v. Welsh*, 192 Mass. 278.

An attempted taking of land for non-payment of taxes which overstates the amount due is void. *Hurd v. Melrose*, 191 Mass. 576.

Stat. 1888, c. 390, § 40 [R. L., c. 13, § 41], provides that in case of a tax sale the collector may sell the whole or any part of the land, and after satisfying the taxes and charges shall pay the balance "to the owner of the estate" upon demand. *Held*, that the word "owner" as used in this clause does not include a mortgagee not in possession, unless his interest as mortgagee has been taxed to him as real estate under Pub. Stats., c. 11, § 14 [R. L., c. 12, § 16]. The mortgagee, however, has an equitable lien on the proceeds of the land, which he may enforce in equity against the grantee of the mortgagor or his assignee with notice. *Worcester v. Boston*, 179 Mass. 41.

A parcel of land was sold for taxes assessed upon the whole parcel. Before the assessment, by proceedings under a grade crossing act a part of the land had been taken for a highway and was exempt from taxation, and another part had been taken for railroad purposes but was outside of the railroad location and was taxable to the railroad company. A third part still belonged to the owners from whom the other parts had been taken and to whom the whole parcel was assessed. *Held*, that the sale was void, as no part of the land was subject to a lien for the collection of one undivided tax on the three portions. *Lancy v. Boston*, 186 Mass. 128.

A demand for a tax on land need not follow form No. 8 in Stat. 1888, c. 390 [No. 9, R. L., c. 13]. Section 96 of that act (see also R. L., c. 13, § 87) permits the use of other suitable forms, and does not require in the demand a description of the real estate or an express reference to it. *Lancy v. Snow*, 180 Mass. 411.

The statutes provide that "if after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within twenty days the sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section." Pub. Stats., c. 12, § 41 [R. L., c. 13, § 47]. If a purchaser does not pay the collector within ten days, the collector must, in order to comply with the statute, make a deed to the city or town; and a deed to the purchaser is void. The statute does not give the collector any option in the matter. In the case at bar there was evidence sufficient to justify the finding that the defendant, the purchaser at the tax sale, failed to pay the collector within ten days the sum bid by him, and to receive his deed. *MORTON, C.J. Holt v. Weld*, 140 Mass. 578.

A statement of a tax in the advertisement of a tax sale as \$17 for the years 1895 and 1896 does not meet the requirement of statements of two taxes, one of \$8 for the year 1895 and the other of \$9 for the year 1896, and a sale thus advertised would be void. *Lancy v. Snow*, 180 Mass. 411.

A collector of taxes, having taxes for two years to collect by a sale of the same land, after proper preliminary proceedings, may advertise the property for sale at the same time and place under authority of the two warrants for the non-payment of the two taxes, and then may make a single sale of the property which will be valid. *Lancy v. Snow*, 180 Mass. 411.

If land is advertised for sale at the same time in the same newspaper by the same collector for the taxes of two successive years, and at the time and place appointed is sold by him to one for the tax of the earlier year, and later at the same sale to another for the tax of the year following, the second sale is valid, and the purchaser thereat is entitled to the land. *Keene v. Sheehan*, 154 Mass. 208.

See further decisions cited in the margin of the statutes.

Certain land was sold for taxes in accordance with the provisions of Stat. 1888, c. 390. At the time of the tax sale the land was subject to a mortgage. The mortgagee, who had no notice or knowledge of the tax sale, afterwards foreclosed his mortgage and took possession of the land, and subsequently sold and conveyed it to another, taking a mortgage back. The holder of the tax title filed a petition in the Court of Registration for the registration and confirmation of his title to the land. The petition was filed four years and about four months after the tax sale, but only about nine months after the mortgagee first had actual notice of the tax sale. *Held*, that by taking possession under the mortgage the mortgagee did not lose his right under the fourth clause of § 57 of Stat. 1888, c. 390, to redeem within two years after he had actual notice of the sale, that this right passed with the land and was held by the mortgagee under the mortgage last made, and that his right was in no way changed or affected by the provisions of § 61 of the same act. The five years from the sale within which a bill to redeem could be brought under § 76 of the act had not expired. *Lancy v. Abington Savings Bank*, 177 Mass. 431.

Seemle, that a tax title is a new title and not merely the sum of all old titles. Per Holmes, C.J. *Emery v. Boston Terminal Co.*, 178 Mass. 172.

Under Stat. 1888, c. 390, § 30, a demand for payment within fourteen days must be made upon a resident owner before his land can be sold for taxes. Section 33 of the same chapter in regard to non-resident owners does not require such demand. Section 43 of the same chapter requires that a tax deed shall state the cause of sale. A tax deed stated as the only cause of sale that, the owner of the land being a non-resident in the city and the taxes still remaining unpaid, the land was duly advertised for sale. In fact, the owner was a resident and a demand for payment within fourteen days had been made, but this was not stated in the deed. *Held*, that the deed was void for non-compliance with the statute. *Downey v. Lancy*, 178 Mass. 465.

The right of a mortgagee to redeem from a tax sale is not lost by foreclosure and passes to the purchaser at the foreclosure sale. *Downey v. Lancy*, 178 Mass. 465.

In a suit to redeem land from a tax sale brought under Stat. 1888, c. 390, § 76, it appeared, that the defendant was a purchaser of tax titles, and there was evidence tending to show, that he intentionally avoided a tender during the two years after the tax sale, and thereafter refused to release except upon payment of a bonus, and that the plaintiff from the time of his discovery of the tax sale had endeavored to find the defendant and make tender before the two years had expired, and thereafter had been reasonably diligent in his efforts to obtain a release. *Held*, that the evidence warranted a finding that the plaintiff was entitled to relief, and that, the plaintiff having been always ready to redeem, the conduct of the defendant dispensed with the necessity of an actual tender. *Clark v. Lancy*, 178 Mass. 460.

One, who without consideration takes a conveyance of land from the purchaser thereof at a tax sale, holds the land as trustee for the party entitled to redeem, and is properly made a party to a bill to redeem with no rights beyond those of his grantor. *Clark v. Lancy*, 178 Mass. 460.

Sections 46, 58 and 59 of Stats. 1888, c. 390, providing, that when the purchaser of land sold for taxes cannot be found after reasonable search, the owner seeking to redeem may make payment of the required sum to the treasurer of the town in which the land is situated, give a cumulative remedy, and do not exclude the right to equitable relief under § 76 of the same chapter. *Clark v. Lancy*, 178 Mass. 460.

The right to maintain a bill to redeem land from a tax sale under Stat. 1888, c. 390, § 76, is not limited to the owner or mortgagee who was such at the time of the tax sale, and where an owner of land, which previously had been sold for taxes without his knowledge, sold and conveyed the land and took a mortgage back, and subsequently on learning of the tax sale brought a bill to redeem under Stat. 1888, c. 390, § 76, and died, it was *held*, that the purchaser from the deceased had such an interest that he could have been admitted to prosecute the suit in the name of his grantor before his death if for any reason the grantor had declined to go on, and on the grantor's death could have procured the revival of the suit under Pub. Stats., c. 165, § 19, and proceeded in the name of his grantor's administrator, and therefore that such purchaser by an amendment of the bill properly could be made a plaintiff in the suit brought by his grantor, and that the five years within which the suit could be brought were to be reckoned as to him from the filing of the original bill. *Clark v. Lancy*, 178 Mass. 460.

Right to redeem from tax sales survives.

In computing the five years from the sale within which a bill to redeem land from a tax sale must be brought under Stat. 1888, c. 390, § 76, the day on which the sale was made is to be excluded. *Clark v. Lancy*, 178 Mass. 460.

Under Stat. 1888, c. 390, § 57 [R. L., c. 13, § 58], an assignee of a mortgage, under an assignment made before a tax sale and unrecorded at the time of the sale, upon recording his assign-

ment, becomes the mortgagee of record entitled to redeem. *Hawks v. Davis*, 185 Mass. 119.

Where the remedy for redemption of land from a tax sale has been enlarged by statute between the time of the assessment of the tax and the time of the sale, a purchaser at the sale takes his title subject to the law in regard to redemption as it stands at the time of the sale, and not as it stood at the time of the assessment. *Rogers v. Nichols*, 186 Mass. 440.

A bill in equity to redeem land from a tax sale within five years may be maintained under R. L., c. 13, § 75, if it appears that the plaintiff acted in the erroneous belief that the taxes on his property were being paid as they came due from the rent of a certain store, and was ignorant of the advertisement of the property for sale and of the sale itself. *O'Callaghan v. Lancy*, 187 Mass. 474.

In a suit in equity to redeem land from a tax sale under Stat. 1888, c. 390, § 57, if it appears that one acting for the plaintiff, on the last day of the two years allowed for redemption offered to pay the defendant whatever was due him, and the defendant refused to accept the money, it can be found that this excused the plaintiff from making any actual tender. *Hillis v. O'Keefe*, 189 Mass. 139.

One who, claiming to own a certain parcel of land, has been upon it, and has paid a tax on the land assessed to the heirs of a former owner, can be found to be the owner of the land entitled to redeem it from a tax sale within the meaning of Stat. 1888, c. 390, § 57, now R. L., c. 13, § 58. *Hillis v. O'Keefe*, 189 Mass. 139.

If a tender to redeem from a tax sale under Stat. 1888, c. 390, § 57 [R. L., c. 13, § 58], has been prevented by the conduct of the holder of the tax title in wilfully and successfully eluding a mortgagee of record having the right to redeem, who has been searching for him for the purpose of paying him and has written to him repeatedly offering to pay, the mortgagee is in the same position, as against the person eluding him, as if the tender had actually been made; and if his attempt to make the tender was made in good faith within two years after he had actual notice of the sale, the lien is discharged, and he can maintain a writ of entry for the land. *Perry v. Lancy*, 179 Mass. 183.

The right of a purchaser at a foreclosure sale and of his assignee to redeem from a tax sale is settled; and this right exists although the mortgage was given after the lien for taxes had attached and the foreclosure was before the tax sale. *Barry v. Lancy*, 179 Mass. 112.

A sale of land for non-payment of taxes assessed to the general owner extinguishes, after the expiration of the period of redemption, the interest of one holding a deed from a predecessor in title of the general owner giving the grantee a right to take gravel from the land down to a certain grade during a period of ten years. *Hunt v. Boston*, 183 Mass. 303.

TAX ON NATIONAL BANK STOCK.

R. L., c. 14, §§ 10, 11.

TOWN DEBTS.

See ASSESSORS, *Duties of.*

TRUST COMPANIES.

Trust funds held by the Worcester Safe Deposit and Trust Company, and the Massachusetts Loan and Trust Company, are taxable to the companies under Pub. Stats., c. 11 [R. L., c. 12]. Such funds held by the New England Trust Co., and other recently chartered trust companies, are taxable under charter provisions similar to those of Pub. Stats., c. 13 [R. L., c. 14], and are therefore exempt from local taxation.

TRUST PROPERTY.

Returning a list of trust property to the assessors of a town in which it is not legally liable to taxation does not authorize its taxation therein. *Hardy v. Yarmouth*, 6 Allen, 277 (1863).

If the trustees of trust property taxable to them as owners, under Rev. Stats., c. 7, § 9 [R. L., c. 12, § 23], reside in different towns, the property should be apportioned amongst them for the purpose of taxation, and the share of each taxed in the town where he resides. *Hardy v. Yarmouth*, 6 Allen, 277 (1863).

The provision of Pub. Stats., c. 11, § 20, cl. 5 [R. L., c. 12, § 23, cl. 5], in respect to personal property held in trust, that, if the "trustee is not an inhabitant of the Commonwealth, it shall be assessed to the person to whom the income is payable in the place where he resides," applies to a case where the trust was created by the will of a testator who lived and died in another State, and whose will was proved and allowed in such State, and was never proved here. *Hunt v. Perry*, 165 Mass., p. 287.

Section 20, cl. 5, of Pub. Stats., c. 11 [R. L., c. 12, § 23, cl. 5], relating to the taxation of personal property held in trust, where the trustee is not an inhabitant of the Commonwealth, so construed as to apply to a case where the trust was created by the will of a testator who lived and died in another State, and whose will was proved and allowed in such State, and was never proved here, is constitutional. The same.

If the interests of *cestuis que* trust in the trust property are several and not joint, an assessment to them jointly of the whole amount of the tax to be assessed upon their respective shares is

an "error or irregularity in the assessment," within the meaning of Pub. Stats., c. 11, § 79 [R. L., c. 12, § 86]. The same.

If the original entry in the tax-book kept by the assessors of a town is of a sum assessed to *cestuis que* trust jointly upon their shares of the trust property, and directly underneath there appears an entry of a reassessment, by vote of the assessors, to the same persons individually, with separate entries of the amount of property and of the tax to each, the reassessment is plainly shown; and, no lists having been carried in to the assessors, a general description of the property is sufficient. The same.

Where, after a tax list containing an assessment of a tax to *cestuis que* trust jointly has been committed to the collector of taxes of a town, the assessors reassess the tax to such persons severally and make an addition in the tax list showing the reassessment, no change or addition in the warrant is necessary in order to authorize the collector to proceed with the collection of the tax. The same.

If a fund is bequeathed to trustees, in trust that they shall pay unto the testator's grandchildren so much of the net yearly income thereof as the trustees in their discretion shall deem necessary, suitable and proper for their good education and support, not to exceed in any one year a certain sum, and at the expiration of twenty years, pay over to his heirs-at-law all the trust fund, with the dividends, interest and profits thereof, to be divided among them according to law, the whole fund is taxable, under Gen. Stats., c. 11, § 12, cl. 6 [R. L., c. 12, § 23, cl. 6], to the heirs-at-law in the place of their residence, if within the State. *Hathaway v. Fish*, 13 Allen, 267 (1866).

In a recent case it has been decided that a bill in equity could not be maintained against trustees of an accumulating fund, to enforce the collection of a tax assessed to the beneficiaries under Gen. Stats., c. 11, § 12, cl. 6 [R. L., c. 12, § 23, cl. 6].

MORTON, J. In *Hathaway v. Fish*, 13 Allen, 367, which was an action of contract brought by the collector of the town of Freetown to recover a tax for the year 1865, assessed upon the trust fund in the hands of the defendants, the court held that the fund was an accumulating fund, which, under the Gen. Stats., c. 11, § 12, cl. 6 [R. L., c. 12, § 23, cl. 6], was taxable only to the heirs-at-law at their place of residence, and not to the trustees. This is decisive of the case at bar. There has been no change in the circumstances of the parties. Now, as then, the heirs-at-law reside in Freetown. They alone are taxable upon this fund, and the trustees are not liable to the town in any form of action. The right to assess and collect taxes is created and regulated by statute. The town can collect the taxes in suit of the heirs-at-law in the modes provided by statute; but there is no provision by which towns, having assessed the taxes upon an accumulating fund to the heirs-at-law or other persons beneficially interested, can recover them of the trustees. We are therefore of opinion that this bill cannot be maintained. Bill dismissed. *Freetown v. Fish*, 123 Mass. 355.

Under the Pub. Stats., c. 12, § 22 [R. L., c. 12, § 25], however, an action at law is provided in such cases.

Division of Tax.

R. L., c. 12, § 24.

See ASSOCIATIONS; COLLECTION OF TAXES.

Trust funds held by trust companies. See TRUST COMPANIES.

WARRANTS.

When a State tax is to be assessed, the treasurer shall send his warrants for the assessing thereof by mail to the assessors of the several cities and towns. R. L., c. 12, § 34.

See *Lowell v. Oliver*, 8 Allen, 247 (1864).

WATER POWER.

See REAL ESTATE. *Pingree v. County Commissioners*, 102 Mass. 76 (1869). *Cheshire v. County Commissioners*, 118 Mass. 386 (1875).

WATER RATES.

See *Young v. Boston*, 104 Mass. 95 (1870).

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